DOCUMENT RESUME

ED 179 616 UD 019 840

AUTHOR Dummett, Anne
TITLE A New Immigration Policy.
INSTITUTION Runnymede Trust, London (England).
PUB DATE Jul 78
NOTE 90p.

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS *Immigrants; *Legislation; *Migration; *Public Policy; Racial Attitudes; *Racial Discrimination; Theories
IDENTIFIERS Australia; Canada; Norway; Sweden; *United Kingdom

ABSTRACT

This book focuses on the issue of immigration to the United Kingdom (U.K.). Causes of migration, such as economic opportunities and emergency political refuge, are discussed in terms of the need for the government to devise an effective and just immigration system. Immigration laws of Norway, Sweden, Australia, Canada, and the U.K. are outlined, and the employment situation, civic rights, standard of living, and social benefits for immigrants are described. Legal, economic, moral, and political theories behind the formulation of policy in various countries are reviewed. The history of government efforts to restrict immigration is shown to be immediately related to ethnic/racial prejudice. The 1971 Immigration Act is held to be designed principally to keep out unwanted people rather than to achieve the social or economic benefits which can accrue from a more far-sighted policy. Some alternatives are explored, taking into consideration joint policies developed by the European Economic Community and restrictions imposed on immigration from within the Commonwealth and from dependent territories. Selection principles which would allow immigration to be controlled on a non-racial basis are suggested. A new administrative machinery for the U.K. which would provide fair and courteous service to immigrants is recommended. (GC)

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OCT 5 1979

A New Immigration Policy

by Ann Dummett

with a Foreword by Ruth Glass

ED179616

UD019840

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A Runnymede Trust Publication

July 1978

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FOREWORD

Although it can be said that the treatment of immigration issues in this country has for long been vague and vacillating, this has apparently not been the major trouble. Looking back over the last twenty years — from the anti-immigration calls following the so-called disturbances in Nottingham and Notting Dale in 1958 to the latest versions of such agitation — we see a definite consistent trend. There has been a steady, overt decline in standards of public discourse on these matters. The subject of 'immigration', alias 'coloured' immigration — an ever expanding misnomer, used to cover not only actual 'immigrants', but also their descendants born here — this subject has become a 'catch all'; a favourite diversionist device; an alibi for expressing or promoting racial prejudice, from the benevolent to the most abusive kinds. The subject has been 'swamped' (to use a fashionable verb) by racialist connotations and stereotypes — bogus sums of black bogeymen predominate. Common sense and sensibility have been blunted. Thus the crude contradiction, inherent in the established gospel of 'good' race relations — which plainly translated simply says 'keep the Blacks out, but be nice to those who are here, and cannot be easily removed' — this contradiction is hardly any longer noticed, except of course by the Blacks themselves. An example of how serenely this is by now taken for granted is given in the recent report by the House of Commons Select Committee on Race Relations and Immigration (First Report, Session 1977–78, Volume I, 13th March 1978). After recommending draconian measures for stopping immigration, and possibly also for the surveillance of immigrants (called, rather ominously, "a system of internal control of immigration") it says: "Nothing in this Report should give rise to fears in anyone, irrespective of race, colour or creed, who has lawfully settled in the United Kingdom".

Altogether, racial prejudice has been so closely tied up with the official consideration of immigration questions that it has become increasingly respectable and explicit. And so it produces more of the same. Against the background of Malthusian or neo-Malthusian fears of population increase — of an increase of the 'masses' rather than of the 'classes' — this is a potent trend. As a result, for some time now it has been racial prejudice (or rather anti-people prejudice) that has called the tune in public discussions about immigration. A sort of ping-pong argument develops: 'Coloured immigrants are problems', say the prosecutors. 'No, some of them are assets', say the defendants. 'Hark, as many as X number of coloured babies are born here', say the first lot. 'No, it's X number minus Y', say the second lot. And so on. One way or another, the objects

of such wrangling — in fact a remarkably heterogeneous series of groups — are deprived of their elementary rights to be recognized as three-dimensional people. Stripped of their humanity, they are regarded and exchanged as mere commodities on the ideological markets.

It is not an auspicious setting for any attempts to liberate the discussion of immigration issues from the accumulated emotive impediments with which it has been afflicted. So far, the neo-Malthusian or racialist screens through which such issues have been seen have prevented not only the recognition of the actual live people concerned — the immigrants, their offspring, their workmates and their neighbours — but also the consideration of essential questions on the substance and form of relevant policies. For instance: to what extent can or should immigration policy as such be divorced from general population or even broader social policies? Is it really necessary to give so much attention, separately and thus inevitably somehow out of context, to small segments of the population, and to a very minor element of population change? How could equity in the administration of immigration policy be achieved without running the risk of implanting a rigid bureaucratic structure, and hence of strengthening the vested interests which have captured this subject? Indeed, how much formality would be needed, and is advisable, in codifying such a policy? There are still many rather novel questions to be explored. The more reason to welcome the contribution made in this pamphlet to the effort of introducing clarity and concreteness into the discussion.

Ruth Glass
Director of Centre for Urban Studies

INTRODUCTION

There will soon be a new British Nationality Act, whatever political party is in power. Such a law will have to be followed immediately by a new Immigration Act, since the current legislation and Rules on immigration deal in categories which the nationality law will have abolished or altered.

The question is: what form will discussion of this measure take? Will a new Immigration Bill simply reiterate the old racial restrictions in a new shape? Will Parliamentary debates repeat the sterile exchanges we have all grown tired of? Or is there a chance that we could make a fresh start, that we could discuss immigration policy *as a whole* in terms of our membership of the EEC, our international obligations, our economic policy and our population needs? The racial flavour of immigration debate since 1961 has not only encouraged racist sentiment in this country; it has blinded people to all the effects that an immigration policy has apart from changes in the racial composition of the population. Thus major issues, of importance to us all in the long term, have been distorted or, more often, ignored.

This Report attempts to open up a new kind of discussion, in practical terms. It includes accounts of other countries' immigration policies and of the legal, moral, political and economic questions that will be at issue in any new legislation. The aim has not been to produce a definitive account, which would be impossible in this brief space and from a single source, but to open the way to an exchange of ideas on an unfamiliar question: if our immigration law is not to be a racial one, what should it be?

The author wishes to thank all those who have given her advice and information, and in particular Mr. Dennis Scown, of the Canadian High Commission, Mr. E. Holt, of the Australian High Commission, Monsieur Eric Thomas of the University of Paris, (working in Oslo), Mr. Roger Opie, Fellow of New College, Oxford, Professor G. Hawke of the University of Wellington, Dr. Asa Kasher of Bar-Ilan University, Professor J. E. S. Fawcett of King's College, London, Mrs. Kit Jones of the National Institute of Social and Economic Research, Mr. Ian Martin of the Joint Council for the Welfare of Immigrants, Mrs. Amrit Wilson, and the Director and staff of the Runnymede Trust.

1. THE NATURE OF AN IMMIGRATION POLICY

No country has, or can have, a policy on immigration whose sole concern is with the numbers of people entering that country, year by year. It simply does not make sense to say that an immigration policy aims merely to increase the numbers, or cut down the numbers, of entrants. Yet the way in which the matter has been discussed in the United Kingdom over the last twenty years has encouraged everyone – politicians, Press and public – to assume that the counting of heads at points of entry is what immigration policy is all about. It is not; it never has been, and cannot be.

Suppose, by way of comparison, one wanted to know what was the employment policy of a particular large hotel. Would anyone think it a satisfactory account of the matter to be offered a list showing the total number of people accepted for jobs of all sorts there over the past year, or past five or ten years? To begin with, such a list would give no idea of how many employees had left in each period; a list of new employees would simply give an unhelpful and almost certainly inaccurate picture of a hotel whose staff was constantly expanding. But even if another list were supplied showing how many had left, the enquirer would then know only the size of the staff turnover; he would know nothing about the hotel's employment *policy*. For that, he would want to know about pay and working conditions, attitude to Trade Union membership, qualifications required and whether there was equality of opportunity for employees regardless of race or sex. He would also want to know, was there a pension scheme? what was the policy on employing the disabled or people who had been in prison? would petty pilfering be a matter for sacking or for prosecution? was there a training scheme or apprenticeships? were seasonal workers taken on? were there health checks? was casual labour taken on briefly without payment of National Insurance contributions? and so on. These are the questions which would enable an enquirer to discover what the employment policy of the hotel was, to decide on what principles it was based and how it was applied in practice. A piece of paper saying 14 new employees had been hired last year, or even one saying 1 assistant chef, 4 kitchen porters, 2 still-room maids, 2 chambermaids and 5 waiters had been hired last year, would tell him nothing about employment policy; at the same time, it might even mislead him into thinking that the hotel seemed to take on a rather high proportion of waiters, if he did not know that 4 waiters had left during the same year.

Similarly, if we want to know what a particular country's immigration policy is, we shall learn nothing from studying the figures for new arrivals. First, and most

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obviously, we shall want to know how many people emigrate, including both members of the indigenous population and of the immigrant population which moves away again. We shall then have a rough idea of the size of migration as a whole. But this will tell us nothing at all about the country's immigration policy. To understand that, we must ask: what kinds of people are encouraged to come and what kinds are refused admission? what are the reasons for preferring some kinds to others? for what purposes are they admitted? what conditions are attached to their stay? If crude numbers were the only criterion, immigration officers would behave like the girl in a theatre box-office; tickets would be issued to all comers indiscriminately until all the available tickets had been sold, and then the 'House Full' notices would go up and nobody else would be admitted. But no country runs its immigration like that, letting everyone in at ports of entry until the annual quota has been reached and then turning everyone else away. There are always criteria for admission, refusal and imposition of conditions, which have nothing to do with numbers. These criteria vary from country to country, and from time to time, but, whatever they are, they indicate what the country's policy on immigration is.

Malta, for example, in its Immigration Act of 1970, granted permission for permanent residence to 'expatriates' (those who were not its own nationals) only on condition that they brought into the country with them at least £100,000 capital or, alternatively, at least £20,000 capital plus an income of at least £4,000. Investment in real estate in Malta was limited for both categories, and the holder of a residence permit under the latter category was forbidden from exercising any profession or occupation in Malta, or from taking part in any political activities there, as were members of his family. Income tax was chargeable, but there was no surtax. Here, the policy is plainly to attract rich people to a tax haven, and to benefit from their wealth while limiting to some extent their opportunities to gain undue power in the country. One effect is, not surprisingly, to limit the numbers of persons allowed permanent residence to a very small figure indeed, to be measured in units rather than hundreds or thousands, but the basis of the policy is clearly a financial one.

Canada, on the other hand, over the last fifteen years has seen immigration as a source of manpower on the labour market. Those most welcome to Canada have been those who wanted particular types of employment; the restrictions have been such as to encourage the immigration of those capable of taking the skilled and professional jobs Canada wanted filled and to keep out those with limited education and no training. Since 1967, there has been a single government department in charge of Immigration and Manpower. The principle of family reunification has also been important, but the main basis of the policy has been economic.

The most striking example of a country with a non-economic criterion for entry is Israel. Regardless of the economic situation in the country, any Jew has an absolute right of entry under the Law of Return, whether he is an American,

Russian, Yemeni, Moroccan or any other kind of Jew. Moreover, he or she will be assisted on arrival with subsidised housing, intensive instruction in Hebrew and help in finding a job. The immigration of Jews is, indeed, the *raison d'être* of the State: the name of the Law of Return itself indicates the theory on which the nation, and migration to it, are based: that the territory of Israel is the Jews' Promised Land. But the basis of immigration policy is not simply religious; it incorporates, rather uneasily, the idea of a people as well as a faith. The definition in the Law of Return says, '"A Jew" means a person born to a Jewish mother or converted to Judaism and who is not a member of another religion'. Under this rule there have been difficult cases, such as that of a man whose father was a Jew but whose mother was not, and of a Catholic Dominican friar whose mother was a Jew – both, in the first instance, refused entry. The problem arises from the nature of Israel itself: it is a secular State founded on a religious assumption. The nationalistic Zionism that brought it to birth was both religious and political.

Sweden has an immigration policy founded on very different principles: secular, liberal-democratic and internationalist. The promotion of social welfare and a comfortable standard of living for all residents, and not merely of all nationals, has been a guiding principle. So has a commitment to admit refugees. So has a sense of community with the other Nordic countries. 5% of the inhabitants of Sweden are foreign subjects. Over half of these foreign residents are from Denmark, Iceland, Finland and Norway; citizens of those countries may settle in Sweden without formalities because of a common labour agreement signed between the Nordic countries in 1954. Most of the rest are from other European countries, both Communist and non-Communist; a small proportion is from other Continents: Asia, Africa and Latin America. Education, medical care, rent subsidies and loans for housing to newly-wed couples are available to Swedes and foreigners alike; the Swedish government subsidises the ethnic Press that serves minorities, and since the end of 1975 foreign immigrants have had voting rights in municipal elections.

Perhaps it is an over-simplification to present Sweden's policy entirely in terms of benevolent social action and a non-nationalistic humanitarianism. However, the importance of these characteristics there is startlingly evident once we compare Swedish law with the Swaziland Immigration Act of 1965, passed when the country was still under British rule. This Act named as prohibited immigrants: people of insufficient means, epileptics, idiots (unless accompanied) prostitutes, pimps, homosexuals, and persons convicted of witchcraft or the practice of herbalism or the use of habit-forming drugs. Prohibited immigrants also included persons who 'in consequence of information received from a source considered by the Minister to be reliable, is deemed by the Minister to be an undesirable inhabitant of, or visitor to, Swaziland' (section 9 (i) (g)). To make sure that the Minister should not have too hard a time getting his way, section 9 (2) specified baldly that 'No person has the right to be heard before or after a decision is made under subsection (i) (g)'. A person who 'belonged' to Swaziland was allowed to

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enter; the decision as to whether or not he belonged was referred under section 10(a) to a special tribunal of five persons appointed by – not surprisingly – the Minister.

The kind of policy which this immigration law represents derives from a very familiar type of political ideology, for which there is no convenient name: perhaps it could be called moralistic authoritarianism. The King of Swaziland, who still rules now that the country is independent, is a conservative traditionalist and a pagan, very hostile to any bad moral influences on traditional Swazi values. Ministerial posts are often held by relatives of his. The country is small and relatively poor; it borders on the Republic of South Africa and on Mozambique; it has some well-known multi-racial schools, to one of which Mrs. Mandela has sent her children. Considering its situation, it is worth emphasising that its immigration policy is not racial or economic in character, but political in a rather old-fashioned sense. It would be a mistake, however, to exaggerate the influence on it of the personal values of the ruler, since many immigration laws in British dependencies today have similar characteristics. Bermuda, for example, makes quite sure of the sanity of its immigrants by prohibiting the entry of anyone who has not 'Bermudian status' and who is insane, of unsound mind, an idiot, imbecile, feeble-minded or mental defective. It also excludes persons seeking to enter for immoral purposes, including prostitution. Belize (formerly British Honduras) refuses entry to stowaways, prostitutes and pimps. The Cayman Islands refuse entry to idiots, epileptics, prostitutes, pimps, and persons over 16 who by reason of deficient education are unable to fill up the prescribed form of declaration for immigrants in their own handwriting, and are likely to become a charge on public funds. Many British dependencies include in their immigration laws a section giving the executive branch of government power to exclude anyone likely to be an undesirable inhabitant or to cause sedition, and Bermuda's government may even keep out persons 'of any particular nationality, race or class' by Order published in the Gazette.

An example of immigration policy that was both moralistic-authoritarian *and* racial can be seen in the series of immigration laws passed by the United States from 1882 to 1929. The policy of that era has now, of course, been considerably changed, but the historical example is of great practical interest to us now. The people of the United States has been created almost entirely by immigration since the sixteenth century: the native population of so-called American Indians has been almost wiped out, and their surviving numbers are very small. British settlers were for a long time the dominant group: in 1836 Germans and Irish immigrants were described by the 'Philadelphia Public Ledger' as 'kin to rapacious locusts'. But fifty years later, the Germans and Irish were regarded, alongside the British and Scandinavians, as 'old' immigrants, and of a desirable kind, in contrast to 'new' immigrants from southern Europe. The former groups were described by Prescott F. Hall, of the Immigration Restriction League, as historically free, energetic and progressive peoples, while the 'new' immigrants, such as Italians,

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were 'downtrodden', 'atavistic' and 'stagnant'. Hostility to southern Europeans flourished in the eastern states of the Union, while on the West coast hostility to Chinese and Japanese immigrants was a more important factor. Racial hostilities were intertwined with moralistic-authoritarian principles, as with the 'Know-Nothing' Party founded in 1854. The Know-Nothings said they were not against immigrants as such, only against paupers and criminals; however, they maintained that only native Americans should be able to hold office. The Know-Nothings never became a very large or powerful party, but the views they represented were of lasting importance in American politics.

The American Immigration Act of 1882 empowered the exclusion of certain 'undesirables', such as lunatics, idiots and those liable to become a public charge. A head tax of 50 cents on each immigrant was introduced. The 1907 Act increased the head tax to four dollars, and excluded anyone who was tubercular, an imbecile or guilty of moral turpitude. From the 1880s until the 1920s, there was constant pressure from many quarters for federal immigration restriction on racial grounds, but this pressure was not in fact openly successful until 1921, when quotas were fixed for immigrants, based on their nationality. The 1921 measure was soon superseded by the Johnson-Reed Act of 1924, amended in 1927 and made fully effective in 1929. Immigrants from the other countries of the Americas were still to be allowed entry, but Japanese immigration was forbidden. From everywhere else, a total of 157,000 immigrants could enter annually, but only under quotas based on the national origins of the United States population in 1920. The vast majority of permits were for Britain, Ireland, Germany, the Netherlands and Scandinavia, and if the available permits were not all taken up, there was to be no transfer of permission to enter to people from other countries. (For many years, the quota for Britain remained largely unused.) There was heavy demand from other countries who had been given very small quotas, so that long waiting-lists developed for Italians and Greeks, while the quota for India was so tiny that it was hardly worth applying at all.

The principle behind the national quotas was overtly racist. Although, on the West coast, demand for protection of native American labour against the cheap labour of 'Orientals' had combined racial with economic factors, the campaign in the eastern United States had been of a purely racial kind based on the intellectual principles of American physical scientists. An influential book published in 1916, *The Passing of the Great Race in America* by Madison Grant, claimed that the nation's Nordic stock, or 'great race', was imperilled by infusions from the Mediterranean and eastern Europe, 'the weak, the broken and the mentally crippled'. The Dillingham Commission reported in 1910 that the high rate of illiteracy among new immigrants was the result of inherent racial tendencies, and a few years later Dr. Harry Loughlin complained that recent immigrants 'present a higher percentage of inborn socially inadequate qualities than do the older stocks.' Popular articles in the *Saturday Evening Post* in 1922, warning that a mixture of Nordic with Alpine and Mediterranean stocks would produce a

worthless race of hybrids, did not spring fully-grown from popular journalism but were based on the supposedly respectable scientific work of Ripley, whose *The Races of Europe*, published in 1899, had declared that Europeans were divided into three separate races with unalterable physiological traits: the Teutons, the Alpines and the Mediterraneans. When, after the First World War, the United States Army published the results of its wartime tests on recruits it was shown that immigrants from south and east Europe had consistently lower IQ scores than those from north and west Europe! Thus racist immigration policy could safely be founded on scientific principles, unimpeachable statistics, and the best interests of the country at large.

This system was many times amended, and was made more restrictive by the McCarran-Walter Act of 1952, which introduced new political restrictions. In the following years, John F. Kennedy campaigned for thoroughgoing reform; this came in 1965, under President Johnson, in an Act which is still in force. United States immigration law, as defined in 1965, is a very complicated structure indeed. It is not based on any one clear principle, nor on a simple and compatible set of principles. Instead, it incorporates elements from all the widely differing immigration policies of the last century, together with new liberal principles, to form an incoherent whole. The system of national quotas has not been abolished, but it has been considerably modified. No country now has a lower quota figure than 100 for the maximum total of persons from it permitted to enter the United States in any one year, and no country has a higher quota than 20,000. This means that people from countries that used to be completely excluded have now some opportunity to apply, while Britain and Germany can send far fewer migrants than they used to. However, the disparities are still large, and are still distantly related to proportions of existing United States citizens of any given national descent. It would have been impossible to arrive at the present quota system by any other route than one starting from the old discriminatory system. The quota is, however, only one part now of an interlocking system of rules: the United States does not take people indiscriminately within each quota until the maximum is reached. Applicants from each country are divided into seven preference-categories, and only when all these have been filled does an eighth, non-preference, category appear.

First preference is given to the unmarried sons and daughters of US citizens; second to spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence; third to members of the professions or persons of exceptional ability in the sciences and arts; fourth to married sons and daughters of US citizens; fifth to brothers and sisters, aged over 21, of US citizens; sixth to skilled and unskilled workers in short supply in the United States; and seventh to refugees. The numbers allotted to each preference-category are set respectively at 20%, 20%, 10%, 10%, 24% and 10% of the maximum quota for the sending country concerned, but there is some provision for the second, third, fourth and fifth categories to take up unused places from the category immediately above their

own. People seeking admission as workers or refugees do not have the chance to take up unused places from higher categories. (However, special permission for refugees is given at particular times: 150,000 refugees from Indo-China have entered since 1975.)

This is not all. A 'labour certification' is required by persons in the third and sixth preference-categories. Moreover there is a ceiling, or maximum quota, for each hemisphere: 120,000 migrants may enter from the Americas and 170,000 from the Eastern Hemisphere.

The old moralistic-authoritarian restrictions survive alongside more recent political ones. An intending immigrant has to satisfy the authorities that he is not mentally retarded, insane, afflicted with psychopathic personality, sexual deviation or mental defect, a narcotic drug addict, a chronic alcoholic or a sufferer from a contagious disease. Furthermore he or she must not be a pauper, professional beggar or vagrant, prostitute, stowaway or polygamist. (King Solomon and Michelangelo would presumably not have had the well-adjusted personalities required.) There is also a prohibition on Anarchists, Communists, and on anyone who has written, published or circulated material advocating either opposition to all organised government or the economic, international and governmental doctrines of world communism. Anyone frank enough to admit that he wants to overthrow the government of the United States in particular is barred.

The policy has, then, a strongly political character, which it would hardly be an exaggeration to call Right-wing. It still has a racial bias, though not with such marked effect as the pre-1965 policy. Most of the preference-categories are based on the principle of family reunion, much more liberally interpreted than in United Kingdom immigration law. There is an economic element, restricting the entry of workers to a very low number so as to protect the home labour market. But perhaps the most striking general feature of American immigration law, in comparison with the laws of other countries here reviewed, is its rigid system of numerical limits. Other countries, whether their policies are expansionist or restrictive, do not have the same inflexibility or the same fixed ceiling under which selection must take place.

Several important conclusions about immigration law in general may be drawn from a comparison of these widely differing examples. First, and most obviously, there is no single characteristic common to them all. Manpower requirements have recently had the chief place in Canada's policy, no place at all in Swaziland's. The claim of refugees to entry on humanitarian grounds has been consistently part of Sweden's policy; it has had no part in Malta's. Central economic planning has had an important place in Israel's government policy generally, but not in its immigration policy at all: immigration has rested on Jewishness but regardless of national origin. In early twentieth-century American policy, national origin was the prime consideration, and, in current American policy, a strict limit on numbers is combined with a complicated system for reuniting families, excluding

the politically and morally undesirable, and protecting American labour.

Secondly, study of these various policies shows that what they reflect are particular governments' *internal political priorities*. One is tempted to think of immigration policy as a part of external policy, since it deals with people outside a nation's borders, but these various immigration laws express, by means of their definitions of wanted and unwanted newcomers, what kind of internal society each government is aiming for. Furthermore, it expresses an order of choices, a sense of priorities. Israel, for instance, does not appear, on the face of it, to be a country which can easily absorb large numbers of immigrants; its territory is very small and includes a good deal of desert – yet the population has quadrupled since the foundation of the State. Israel has depended heavily on outside aid, but, as Chaim Bermant has commented 'she defines her priorities first and thinks about paying for them later'. And the two priorities have been: Jewish immigration without limit, and national security. Vitally important though economic development has been, it has not been *the* political priority. Hence it is not expressed in immigration policy. Sweden has restricted the entry of foreign workers, to protect the Swedish labour market, but this protection has not been *the* political priority, so it occupies only a part of immigration law, whose effects are considerably modified by other parts of the same law, particularly the liberal policy on refugees.

One could go on from here to conclude that the range of choices open to any government, in determining its immigration policy, are actually very much wider than they appear at first sight to be. It is all a matter of what a particular government wants most: in pursuit of its principal aims it need not be deterred by difficulties. There are no general rules to which all immigration policies conform. It might reasonably be supposed that population density, for instance, was an important factor determining everyone's policies to some extent, but the evidence shows that this is not so at all. Canada, with a population density of about 6 to the square mile, does not open its borders to all comers. Hong Kong, one of the most densely populated areas in the world with about 10,850 people to the square mile, still permits immigration: indeed, its population has grown, chiefly by immigration, since 1945 from 600,000 to over 4,384,000. (United Kingdom density, for purposes of comparison, is about 575 to the square mile.) It might also be reasonably supposed that the maintenance of a high material standard of living would always be a factor, but though it is evidently a prime consideration in Sweden's policy, and Canada's, it has been irrelevant in Israel's – where severe austerity was suffered in the early years – and has, oddly enough, never played any important part in the immigration policy of the United States.

The choice, then, is wide open: the policy to be adopted depends upon a government's sense of priorities and, even more, upon its political will.

2. THE CAUSES OF MIGRATION AND THE PROBLEMS OF CONTROL

One can draw up a list of the reasons why people migrate in the modern world and find that the same reasons have caused the movement of groups and individuals repeatedly in the past, and in all parts of the world. There are constant factors at work, producing the need, or the desire, to migrate.

The most extreme case occurs when one government banishes or deports people, forcing their migration elsewhere. More common, and almost as extreme, is persecution, which makes people seek escape from the danger of death or imprisonment. Recent familiar examples of these two cases are President Amin's expulsion of citizens of the United Kingdom and Colonies from Uganda in 1972, and the persecution of political opponents by the régimes in Chile and Argentina.

Desperate poverty in one place causes those inhabitants who are able to move away to do so: the migration of large numbers of Irish to the United States after the terrible famine of the 1840s is a case in point. Moving along the scale: hardship which stops short of the threat of starvation, but which makes life wretched and insecure, presses poor people to move to where they can be – or at least hope to be – a little less badly off: the migrations from countryside to city in early nineteenth-century Britain, the early twentieth-century United States, and contemporary African and Latin American countries, exemplify this process, but it also occurs in international migration. Unemployment in one country drives some of the inhabitants towards other countries where work is available: this happened with British people moving to Australia, Canada, New Zealand etc. during the inter-war Depression, and with people from the Caribbean nations coming to Britain after 1945. Here, the 'push' factor, driving people to escape unemployment in one country, is complemented by the 'pull' factor of available employment in another.

Moving yet further along the scale, one reaches the kind of migration that is not caused by actual unemployment or hardship in one place so much as by the positive attractions, or pull-factor, of another. A British toolmaker may choose to go to West Germany, not because he is unemployed in Britain but because he can get better pay and less frustrating conditions of work there. For similar reasons, a British dentist may go to Australia. But positive atttractions are often not measurable in terms of income alone: people migrate to where they think they would like the climate better, or where there is an educational system they believe would be best for their children; an American may migrate to Britain just because he likes the style of life there and even though he will make less money than at home.

Many individuals move from place to place for personal reasons which are not at all easy for bureaucrats to categorise. The musician, the writer, the person who

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wants to go round the world for the fun of it, often have the vaguest of plans, and mixed motives. The woman lately widowed who wants to join relatives abroad, the teacher who thinks it would be interesting to gain experience of a different kind of teaching system for a while, may well have difficulty ticking the boxes on government forms. Moreover, it is not easy to separate all these different kinds of migrant one from another, or to assess for any of them – except in the extreme cases of banishment and persecution – how strong is the pressure on them to migrate. Some people have risked death to emigrate from East Germany when staying there would not have meant death, imprisonment or unemployment; Mexican farm-workers have gone through severe hardships and risked arrest in order to enter the United States and work in appalling conditions for very low wages. A man seeking a job at twice his present salary may be impelled by a mild wish to get richer or a desperate sense of urgency. Two general conclusions can be drawn. One is that the pressure to migrate is frequently strong enough to burst through the controls of government policies: the result then is illegal movement into or out of particular countries. The other is that all immigration laws have to be, in certain respects, vague: there must be a discretionary power to admit or refuse people which can be exercised in the cases which are not easy to categorise.

It is evident, then, that a very important part of any government's immigration policy lies in the administration and enforcement of the law. Two countries might have identical provisions on their statute-book for the admission and refusal of certain types of worker, but if in one country the administration was lax, and the authorities turned a blind eye to the employment of illegal immigrants, and in the other all evasions were chased up by the police and dealt with severely, the two countries would have similar *laws* but different *policies*.

The discretionary power that all governments' immigration laws include is generally wielded by the executive branch of government, by a senior Minister and his officials. This power may be used to create policy, in addition to, and sometimes in contradiction of, the policy embodied in an Immigration Statute as a whole. Israel's immigration law, for example, the Law of Return, refers only to Jews. People who are not Jews cannot discover where they stand, therefore, from this law; they cannot even do so from regulations, since there are no written regulations either on the admission of non-Jews. A special committee considers the case of each applicant separately, and looks at his reasons for wishing to migrate to Israel and what means he has for living there, but it is impossible to discover what policy controls the decisions made. The committee makes its own policy, which exists *in addition to* the statutory policy outlined in the Law of Return. The United Kingdom affords an example of the use of discretion to *contradict* the general policy of a statute. The 1971 Immigration Act denies right of entry to United Kingdom and Colonies citizens who were not patrial: this category included, among others, citizens of Indian descent who were living in Uganda. But when President Amin announced he was going to expel these United Kingdom and Colonies citizens, the Home Secretary exercised the discretion

given him in section 8(2) of the Act to admit these non-patrial citizens to the United Kingdom.

A degree of discretion in administration is required not only because some immigrants are difficult to categorise, but because all sorts of sudden events or changing circumstances may impel a government to admit or refuse people in a hurry. Several European countries responded quickly to the need to admit refugees from Chile after the Pinochet coup, waiving normal requirements in order to do so. On the other hand, discretion is frequently used by governments to refuse entry to people who fulfil the general requirements laid down in the immigration law but who are considered individually undesirable. It is of importance here that the requirements of the law are often themselves so vaguely worded as to leave considerable discretion in the hands of the authorities interpreting them. Since the First World War, the United Kingdom's Home Secretary has been empowered to refuse aliens whose presence is in his opinion 'not conducive to the public good'. This term is so imprecise that the Home Secretary can in practice refuse whom he likes. Recently, since United Kingdom entry into the EEC, there has been some movement towards defining the term more clearly, and in accord with the EEC concept of *ordre public*, translated now as 'public policy', but only in relation to nationals of EEC countries, in whose cases the United Kingdom is bound now by EEC law.

The flexibility that discretionary powers make possible can be used for good, as in the admission of refugees in a crisis, or for ill, in the arbitrary and unjust detention of individuals for political reasons, in keeping families separated, and in delaying the processing of applications in cases where hardship is suffered as a result. The administrative machinery set up by a government to operate an immigration law is therefore an important determinant of immigration policy.

Such administrative machinery has to deal also with what may be called emergency controls. These stand apart from the main body of immigration policy, and are used to tackle the very difficult problems posed by the growth of international terrorism and by the need to prevent the spread of highly infectious or contagious diseases. Public health and national security make grounds for refusal in all countries. Powers to refuse individuals on these grounds can, however, be abused. The problem is: how to devise an immigration law, a system of enforcing it, and an appeals system to review the decisions made under it, which can make the government's total immigration policy and its emergency control system effective without injustice to individuals?

This is not an easy question to answer. A large part of the difficulty that people in the United Kingdom may see in it, however, is due to its unfamiliarity rather than to its complexity. We are just not used to thinking about immigration law as a whole, any more than we are used to thinking about migration policy as a whole. The following section describes the immigration laws of several other countries: looking at their varied problems and policies can help us to see our own more clearly.

3. SOME COMPARISONS WITH OTHER COUNTRIES

Each country has its own view of what immigration is. To some, it is a total inward movement of people, other than tourists; others have much more positive definitions. Canada, for example, sees immigration as a very important factor in the creation of the nation's character, and uses the term 'immigrant' only to mean a person coming for permanent settlement, with a definite commitment to becoming part of the nation. People who enter Canada for a year, or several years, to work but have not this commitment are called 'non-immigrants'. Similar groups in many European countries would be called 'immigrants'. The United Kingdom has developed its own peculiar usage, in which 'immigrant' means a black or brown entrant or resident or citizen. These differing views of the matter affect the ways in which statistics are kept, and it is therefore impossible to compare immigration figures from one country to another in any genuinely illuminating way. Sweden keeps figures on 'resident foreign nationals', classified by their citizenship: Canada enumerates its immigrants (in the strict sense described above, and so not including all residents originating elsewhere) by their destination in Canada and also the last country of residence: the latter is frequently not the country of citizenship.

Emigration figures are also difficult to compare; these may include emigrant citizens of the country concerned, together with former immigrants who have decided after all to leave, or they may include only the latter group. Countries which do not control emigration have to use indirect means to assess the numbers leaving; even countries which do control it may not have accurate, or public, records of numbers.

The following account concentrates on the kind of facts about migration which are comparable. Much, though not all, of the information comes from official government sources in each country. The descriptions given are necessarily brief, and open to qualification on points of detail. However, the aim is to show that all countries with immigration restrictions face certain common problems, and have found different methods of tackling them. All face similar uncertainties, too, about the future. In looking at what other countries have done, and plan to do, in immigration policy, we can draw many valuable conclusions about the alternatives open to the United Kingdom in devising an immigration policy.

NORWAY

Population: 3,973,000

Migration's effect: net immigration. (Very few people emigrate.)

Employment situation: Officially, there is full employment in Norway. There are some people unemployed who do not show up in official figures, but the same is true in most other countries. Despite the very low unemployment figures, there is no severe shortage of labour in any particular sector.

Migrant workers are not concentrated in the unwanted or dirty jobs. Some are highly skilled technicians in the oil rig industry. Most Pakistanis are in the catering trade.

The employment pattern may change rapidly in the near future, according to what decisions are taken on the rate of exploitation of North Sea Oil, which has already greatly increased the country's wealth, but which is threatening traditional occupations such as fishing in some parts of the country.

Civic rights: Foreigners may join political parties but may not vote or stand for office in either local or national elections. Their right to positions of trust in government, and in municipal and county administration, is limited. They are not required to do military service.

Standard of living and social benefits: The standard of living is high and constantly improving, although there is a severe housing shortage in the cities. Tuition in primary and secondary schools and Universities is free of charge and open to foreigners as well as Norwegians, but a knowledge of the Norwegian language is required and entry to the universities is competitive. Free tuition in the language is available to children and adults in most places.

Taxes are high, but there are many public services provided in return, to Norwegians and foreigners equally: family allowances, old age pensions at 67, free medical care for mothers and children at health centres, a free school dental service, unemployment benefit, disablement pensions, sick pay, free hospital treatment, and a National Insurance scheme which covers most, but not all, of the cost of treatment by a general practitioner and supplies certain important medicines free. The individual pays a small proportion of the doctor's fees and has to buy most medicines himself. Poorer people can obtain free legal aid and rent subsidies. Everyone, foreign or Norwegian, is entitled to four weeks' paid holiday a year and is protected by the law against unfair dismissal. The State regulates working hours and overtime pay, and requires of some firms that employees are represented on decision-making bodies. Foreign workers are not obliged to join a Trade Union, but there is some pressure to do so.

Authorities responsible for immigration: The State Aliens Office is responsible for the issue of residence and work permits, but the Directorate of Labour is consulted about the latter. An alien must notify both the police and the local

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Population Register of any change of address. (Norwegians themselves have to notify the Population Register, but not the police, if they move house.) The police are empowered to admit, refuse and expel aliens under the provisions of the Aliens Act and the Regulations Concerning Aliens.

Immigration Appeals: A person has an appeal against any decision concerning work permits, residence permits, refusal of admission, expulsion etc. He has, as a rule, the right to see the documents in his case. The effect of a decision must be delayed until an appeal has been heard, and a lawyer's help in appealing may be obtained. In certain circumstances, legal aid is free of charge.

Immigration Policy: Norway has had since 1954 an agreement with the other Nordic countries (Iceland, Sweden, Denmark and Finland) for free movement of labour, so there has been uncontrolled migration between them for some time. Until recently, there was a comparatively open policy towards nationals of other countries also, and no figures on immigration to Norway are available from before 1974.

The largest single group of immigrants is from the United States: some of these are people of Norwegian origin or descent whose families had earlier emigrated to America; some are oil technicians. The next largest groups are of British and Pakistani citizens. Asian immigrants to Norway were very few until the 1970s, but the United Kingdom's restrictions on entry of its own citizens from East Africa caused some of them to seek entry in the Scandinavian countries, and the figure for British immigrants includes many people of Indian descent from African countries.

It was probably this sudden increase in Asian entry which prompted the Norwegian government in 1975 to impose what is called an immigration stop, for one year. This ban was renewed in 1976 and is still in operation. The reason for it given by the government was the need to maintain a high standard of living in Norway for all inhabitants, native and immigrant, and the severe housing shortage which had developed, particularly in the big cities to which new immigrants went. (This housing shortage has not been much alleviated, however, since the stop was imposed.)

Although the Norwegian authorities refer to the 'stop' as if it were a total ban, it is in fact nothing of the kind. It represents a sharp change of policy in Norway's own terms from the openness of former decades, but it actually permits entry more easily to a wider range of persons than existing United Kingdom immigration law. Citizens of Denmark, Iceland, Finland and Sweden may still enter without any restriction. Crew members and experts on mobile drilling rigs on the Norwegian Continental Shelf are unrestricted. Various groups are exempted from control under paragraph 46 of the Aliens Regulations, including seasonal workers and employees of multi-national companies. Refugees, stateless persons banished from their own countries, scientists, artists, musicians, spouses and children of

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Norwegian citizens and of foreign work-permit holders may enter. So may several other groups, notably specialists and skilled workers for posts where domestic manpower is not available. Employers' and workers' organisations are consulted on the issue of work-permits, and the employer is responsible for seeing that a permit-holder has adequate housing, approved by the local Health Council.

A work-permit is issued in the first instance for one year with a particular employer, and a one-year residence permit is issued at the same time. After a year, the work-permit can be renewed: it need no longer be tied to a particular employer or job. The residence permit may then also be renewed. After two years, permission is given to work and reside in Norway for an unlimited period. These restrictions have been imposed only since the immigration stop, so there is little experience yet of how they will work in practice. However, the rules seem to be fairly liberally applied; it has become much more difficult than it used to be to enter Norwegian territory to work but, once you are there, it is very easy to remain.

Meanwhile many Commissions and committees are at work on the question of how to frame a long-term immigration policy, to succeed the immigration stop. The President of the official Government Commission is a University Professor who was formerly Norwegian representative on the European Commission of Human Rights. Draft reports from this Commission are sent at intervals to the Churches and to many public and private bodies for their comments.

SWEDEN

Population: 8,208,000

Migration's effect: Net immigration. (There is a considerable flow inward and outward, which fluctuates according to the economic situation. During a stagnant period in 1972–3, emigration for a short time was greater than immigration, as many people left to look for work in Finland.) Resident foreign nationals are now 5½% of the total population.

Employment situation: Sweden has had full employment over a long period, and has struggled to maintain it in the face of recent economic difficulties, providing subsidies and loans for investment to industries whose competitiveness in world markets is declining, so as to prevent loss of jobs.

Civic rights: Aliens have essentially the same rights as Swedes; they may even vote in municipal elections, though not in Parliamentary ones.

Standard of living and social benefits: There is a high standard of living and a comprehensive welfare system. Hospital and maternity services are free; a health insurance scheme covers medical expenses, dental care and sick pay; and there are child allowances and public assistance benefits: all these are available equally to Swedes and foreigners. The basic social security pension is available only to

Swedish citizens, but reciprocal international agreements have been made under which 90% of aliens receive such a pension. Tuition is free for Swedes and foreigners in schools, colleges and Universities. Immigrant children are given special language instruction in both Swedish and their mother tongue. Adults also receive free tuition in Swedish language; in 1973 a law was passed *requiring* employers to give immigrant employees up to 240 hours' leave of absence *with regular pay* to attend Swedish lessons. The expense of all these educational facilities is borne by the Government.

There is great emphasis laid on the maintenance of cultural traditions among the various immigrant groups. Parliament has authorised grants to immigrant organisations and the ethnic Press as well as to services for immigrants provided by Swedish voluntary organisations and by local government. Local government provides certain special services, such as a free interpreter service. Rent subsidies, and housing loans to newly-wed couples, are available to Swedes and foreigners alike.

Authorities responsible for immigration: The responsibility for implementing immigration policy is shared between the National Labour Market Board, the National Police Board, the National Board of Health and Welfare, and the National Board of Education. The ministry responsible for setting out the general principles of the policy is the Ministry of Labour. An advisory council on immigration policy, including representatives of the ethnic groups, was attached to the Ministry of Labour in 1975.

The body responsible for granting aliens permission to enter Sweden, and also for deciding whether or not to grant Swedish citizenship to an alien, is the Immigration and Naturalisation Board, set up in 1969. It publishes information for immigrants, and also informs the Swedish public on immigration issues.

Immigration Appeals: Appeals may be made to the Immigration and Naturalisation Board against refusal of entry and against removal. The advisory committee must be consulted by the Board on appeal cases. Where the advisory committee requests it, the Board may submit an appeal against refusal of entry to the King-in-Council (the highest executive authority); there must, in the opinion of the Board, be special grounds for such an appeal. In certain circumstances, an immigrant may appeal direct to the King-in-Council against a decision to remove him from the country.

Deportation is a matter for an Administrative Court. Appeals against deportation may be made under the same rules that apply to judgments and decisions in an ordinary Court.

Immigration Policy: The tone of Swedish policy is evident in the first two sections of the 1954 Aliens Act, which say, 'An alien is entitled, to the extent and under the conditions set out in this Act, to enter and leave Sweden, and also to stay in this

country and to hold employment here' and 'A political refugee shall not without grave reasons be refused asylum in Sweden when he has need thereof'.

There is strong emphasis on the admission of refugees; some come under transfers agreed with the U.N. High Commissioner for Refugees; others arrive individually.

There is freedom of movement of labour with the other Nordic countries, as with Norway, but since 1973 there has been some attempt to channel migration from or to Finland through the two countries' public employment services. In 1976, about 60% of the immigrants in Sweden were from other Nordic countries.

For non-Nordic nationals there is a work-permit system. A work-permit is issued for one year in the first instance and is tied to a particular job. Applications for permits are submitted to the Trade Unions and to the National Labour Market Board and its agencies, but the final decision is taken by the National Immigration and Naturalisation Board. Housing must be arranged before a work-permit is issued. A one-year residence permit is given at the same time as the work-permit. After a year, the work-permit is made valid for all occupations, and a permanent residence-permit is issued. Wives and minor children of permit-holders are admitted.

The relationship between Sweden's labour market and the number of work-permits issued is a very loose one. Since Nordic-country nationals, most refugees, and some dependent wives, take jobs without restriction, and the work-permit system ties an immigrant to a particular job for only one year, after which he can remain indefinitely and change his occupation, it is obvious that planning of the labour market plays no significant part in Sweden's immigration policy.

Migration flows constantly, both in and out of the country. Of all the immigrants who arrived in Sweden during 1968, one-third had emigrated again by the end of 1972. None the less, the proportion of foreign nationals rose from 0.5% of the population in 1945 to 5% by 1975. The largest non-Nordic group is of Yugoslavs, followed by Greeks, Germans, Turks and British (including British Asians).

AUSTRALIA

Population: 14,000,000

Migration's effect: Immigration and emigration are almost in balance. There was net emigration in 1976–7. The net gain through immigration in the preceding year, 1975–6, was only 0.16%.

Employment situation: In common with many other highly-industrialised countries, Australia has suffered a setback to economic growth since the oil crisis of 1972. The labour market is depressed, and there is considerable unemployment in some areas, but in other areas there are severe shortages of workers with certain skills, such as doctors, nurses and metal-workers. These labour-shortages have

been aggravated in recent years by two factors: the slowing-down of immigration, and the unwillingness of native Australians to take what they regard as 'immigrant jobs'. Such jobs are not necessarily low-paid and dirty.

By the 1960s, an economy based on continual immigration had settled into a pattern wherein native, British-born and German-born Australians dominated commerce, finance and public administration. The same groups were strongly represented in sales, transport, clerical work and business services. Nearly half the migrants of other origins (including Italian, Greek, Yugoslav, Chinese, etc.) were concentrated in skilled and semi-skilled manual work. The reduction of immigration in recent years has not altered the expectations and aspirations of the native Australian workforce nor increased its mobility. New development, such as the expansion of mining and the steel industry, has relied heavily on non-British migrant labour.

Recently, there has been an increase in Asian immigration, mainly of highly skilled workers such as doctors and dentists, but employment opportunities for them are very unevenly distributed, and are mainly away from the big cities.

Civic rights: Alien migrants who have not yet obtained Australian citizenship may not vote in national or State Parliament elections. In some localities, however, all local residents (including non-citizen migrants) may vote for local councils.

There is an important difference here in the civic rights of British Subjects: that is, not only immigrants from Britain but persons who are citizens of any Commonwealth country (e.g. India, New Zealand, Kenya). British Subjects are not only allowed but obliged to register as voters after six months' residence in Australia; they are then obliged to vote in national and State elections.

All migrants are eligible to obtain Australian citizenship, with accompanying full voting rights, after three years' residence, regardless of national origin. (A shorter qualifying period of residence used to be permitted to British Subjects, but this provision was abolished by the Whitlam government in December 1973.)

Standard of living and social benefits: The standard of living varies but is generally high. Social benefits are available to those with 'residence' status, which means Australian citizens and persons who have arrived with a migrant's visa. The latter group is eligible for benefits immediately on arrival and can, if necessary, claim unemployment benefit straight away. Unemployment pay, sick pay and free education are available to all citizens and migrants; and there is a compulsory national medical insurance scheme, called Medibank, under which medical attention can be obtained for a low charge. (The Fraser government has permitted contributors to private medical insurance schemes to opt out of Medibank.)

Authorities responsible for immigration: Under the Whitlam government, there was a Department of Labour and Immigration; the Liberal administration has

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changed this to a Department of Immigration and Ethnic Affairs. The Minister concerned has absolute discretion to admit or refuse whom he wishes and to oversee administrative arrangements. He is limited only by very broad guidelines of Cabinet policy. There are no published regulations on admission. The Migration Acts are not concerned with criteria for admission but with the affairs of migrants after entry.

Immigration Appeals: There is no appeal against refusal of entry. Appeals may be made to the High Court, in some circumstances, against deportation.

Immigration Policy

(a) *Historical background:* From 1901 to 1958, the federal Immigration Restriction Act was in force. Under this, all intending migrants had to pass a dictation test in a European language. The 'White Australia Policy' to which this statute gave expression encouraged the movement to Australia of British and other north European migrants throughout the period: at many stages they were helped with assisted passages. Meanwhile Japanese and Chinese pressure to migrate was held in check. Policy was openly racially discriminatory.

Just before the Second World War, Australia agreed to take a number of Jewish refugees from Germany. After 1945, the pattern of migration changed. Australia urgently needed labour, but so did Britain; there were not nearly enough British migrants to fill Australian needs. 170,000 Displaced Persons from all over Europe were admitted just after the war. German and Dutch migrants were relatively numerous in the 1950s, and 14,000 Hungarians were admitted after the 1956 uprising in Hungary. Italians, Greeks, Cypriots, Turks and others entered during this period. In the 1960s, the EEC became a serious competitor for migrant labour. Australia had to find new sources, and attempted to draw migrants first from the United States and then from Central and South America. As other sources of migration dried up, small numbers of Asians, mostly from India and Hong Kong, were admitted: Asians made up 4% of migrants from 1966 to 1970. In 1973, the Australian government proclaimed a new policy of non-discrimination by race, colour or nationality, in the selection of migrants. However, occupational restrictions were introduced in 1974, which excluded people of any origin who were not highly skilled. (Dependant relatives and refuguees were, however, admitted without occupational restrictions.)

These fluctuations in admissions policy took place with hardly any statutory change. The Minister responsible for migration has always had complete discretion to grant or refuse entry visas.

(b) *Current policy:* All persons coming for residence, except New Zealand citizens and New Zealand residents from other Commonwealth countries, must obtain a migrant's visa from the Australian government. Visas are issued mainly to the following:

(i) Husbands, wives, dependant children and parents of Australian residents

(ii) Workers with skills or qualifications in strong and continuing demand in Australia
(iii) Workers required for particular positions in Australia for which an employer has been unable to find a suitable applicant in the resident workforce
(iv) Refugees
(v) UK citizens with an Australian-born parent or grandparent (this mirrors the UK's admission of patrials from Australia).

Entrepreneurs, with capital, artists, and also self-supporting persons from the UK, Ireland and Canada may be admitted in some circumstances. In all cases, the applicant must intend to reside permanently in Australia. (Actually, many people admitted on visas leave again; roughly 20% of the total since 1945 has done so.) All must also meet certain health and character requirements, though health requirements are occasionally waived for refugees.

Until 1974, many immigrant visas were granted on the family reunion principle, which embraced distant relatives and even friends of Australian residents nominating them. These nominees did not have to have occupational skills. Since 1974, however, nominees have to meet the same standards as independent applicants; they must be 'economically viable' and 'able to integrate with the Australian community'. This new rule marked a sharp change in policy. However the immediate family of a resident (as defined in (i) above) does not have to meet these requirements.

(c) *The Australian Green Paper:* In April 1977 the Australian government threw open the debate on future immigration policy to the public. A Green Paper, entitled *Immigration Policies and Australia's Population* was published, and general discussion of it invited.

The question of how to decide the size and character of an optimum population for Australia plays a large part in the Green Paper. Defence and foreign policy, economic policy, family reunion, and a positive plan for refugees, are discussed each in a separate chapter. The ethnic composition of Australia's future population is dealt with indirectly in many parts of the report, with references to 'community attitudes', language problems and 'social background'. It is also tackled head-on with the question:

> Would it be defensible morally and in terms of our international relations, to exclude from Australia people who would have been eligible had they been Europeans? Will existing prejudices in Australia be dispelled or accentuated by an increasing level of migration of non-Europeans?

The Australian government's problem is that it needs to increase total immigration considerably in order to fulfil its major national goals. Australia loses population constantly and heavily through emigration, and the birth-rate among native Australians has fallen sharply since 1971. People, and particularly young, skilled and healthy people are what the government wants. But such

people cannot be obtained in sufficient numbers from Britain and northern Europe any more, and, despite the proclamation made in 1973 of the principle of non-discrimination, the government has balked at the prospect of a sharp alteration in the racial balance of migrant intake. Migration to Australia since the War has been much more cosmopolitan than formerly, but the United Kingdom and Ireland still sent over 45% of migrants between 1959 and 1970. Other European countries accounted for over 40% of migrants in the same period. Asian immigrants are still a tiny minority. But many people in Hong Kong and Malaysia would like to migrate to Australia. The need for new population conflicts with very long-standing anti-Chinese prejudice from the openly White Australian era.

CANADA

Population: 23,000,000

Migration's effect: Net immigration. The net gain in population through migration, however, depends now as it has done through most of Canada's history on the difference between high emigration and even higher immigration. From 1961 to 1971, for example, there were about 1,260,000 immigrants and 802,000 emigrants; the figure for immigrants describes those admitted for permanent settlement and does not include temporary workers. Surprisingly, natural increase rather than immigration has been the main source of Canada's growth since 1867. At times, there has been net emigration, as in the decade 1881–1891, when over 1,000,000 left the country and about 900,000 entered it. During the 1960s, immigration fluctuated considerably, between about 70,000 and 200,000 a year, with emigration more constant at roughly 60,000 in most years.

Employment situation: Canada has a serious unemployment problem; the national total averages over 9% unemployed. There is considerable regional variation. Unemployment is only 4.6% in Alberta, but 11% in Quebec and 25% in Cape Breton. In the 1960s, Canada encouraged highly skilled and professional immigrants, but the expansion of higher education for the native population has recently produced a large number of young graduates, and the demand for professionals from outside, for example doctors, has dropped sharply. However despite this change, and despite general unemployment, there is still difficulty in finding people 'willing to remain in unskilled or semi-skilled occupations, especially if they involve geographic remoteness, unattractive working conditions, low wages or any combination of the three', according to the Canadian Government's recent Green Paper on immigration.

Civic rights: The vote in Federal elections is restricted to Canadian citizens. Voting arrangements for the Provincial Parliaments vary. In some Provinces the

vote is restricted to citizens, but in others any British Subject (i.e. a citizen of any Commonwealth country) may vote after a qualifying period of residence, varying from 6 to 12 months. In the North-West Territories, citizens, British Subjects and landed immigrants with 12 months residence may vote, and Manitoba extends the franchise to spouses of Canadian citizens.

Standard of living and social benefits: In money terms, the average income in Canada has long been much higher than in the United Kingdom; the cost of living used to be higher too, but recent inflation in the United Kingdom has been so rapid that it is now probably a little cheaper to work in Canada. The Canadian standard of living has then been consistently better than here, though housing is comparatively expensive. There is a comprehensive welfare system. Tuition in schools is free, and University education is subsidised so as to be very cheap. Both are available to citizens and immigrant alike, as is a student loan plan for higher education. The Provincial governments are responsible for education, but the Federal government bears half the cost. The Provinces have their own Health Insurance schemes, comparable with each other in value and largely funded by the Federal government. These cover doctors' services, hospital treatment, and in some cases medicines, but not dental care. The Federal government pays unemployment benefit, and there are generous family allowances.

Housing is easily available in many areas, but there is a housing shortage in the cities and particularly in the areas where unemployment is lowest.

Legal aid schemes are organised by the Provinces. Anyone, citizen or immigrant, may join a Trade Union, but only about a quarter of the total labour force is unionised; although there are closed shops in some industries, the Trade Unions are much weaker than in the United Kingdom and other European countries.

Authorities responsible for immigration: Canada has an unusual history here: responsibility for immigration has been moved between different departments of government many times over. At first, after 1867, when immigration was unrestricted, the Department of Agriculture was made responsible for active encouragement of entry by farmers and farmworkers. From 1892 to 1917, the Ministry of the Interior combined administration of lands and of migration policy, and in 1917 a new Department of Immigration and Colonisation was set up. In 1930, with the Depression, all promotion of immigration was stopped and in 1936 the Immigration Service was demoted to become a mere branch of the Department of Mines and Resources. In 1947, an inter-departmental committee was established to advise the government on migration, and in 1949 a new Department of Citizenship and Immigration was created. Policy went through many vicissitudes in the next fifteen years, and pressure grew to plan more effectively for the needs of the labour market. In 1966 the national Employment Service, elements of the Department of Labour, and the Immigration Service

were combined to form a new Department of Manpower and Immigration. In 1971, major elements of this Department were joined with the Unemployment Insurance Commission to form the Canadian Employment and Immigration Commission.

This Commission employs immigration officers at ports of entry as well as officials at employment offices dealing with the working population as a whole. Police working with immigration enforcement officers have responsibility for checking on illegal residents and overstayers. The Commission, through its Foreign Service branch, employs overseas Selection Officers. Provincial governments have some overseas offices, and provide some parallel services after arrival, with the Commission. Voluntary agencies play an important and recognised role in helping settlement.

Immigration Appeals: Canada first set up an Appeal Board in 1956; its workings were in many ways similar to those of the system now established in the United Kingdom. It was replaced in 1967 by a completely new machinery.

The 1956 Board was empowered at first to deal only with appeals against deportation made by landed immigrants and persons claiming to be citizens, but its scope was gradually widened. All decisions were subject to review by the Minister (in practice, the Deputy Minister) who also appointed the members of the Board. This system caused dissatisfaction, and also failed to function usefully since almost all appeals came to be referred to the Minister if turned down by the Board.

In 1967 a new Appeal Board was set up as an independent tribunal with the status of a court of record and with sole and exclusive jurisdiction to hear and determine all questions of fact or of law in appeals against deportation and also against any refusal by the Department of Immigration and Manpower to approve an application for a sponsored dependant. The Minister was bound by the Board's decision, which was final, save for appeal to the Supreme Court (later the Federal Court) on questions of law or jurisdiction. The Board could quash or stay a deportation order. Right of appeal was then widened to all deportation orders under the Immigration Act. The Board could also order the release of anyone detained under the Act. Its discretion was curtailed in national security cases, but even in these it could hear appeals on the legal aspects of the case.

In the next few years, the waiting list for appeals grew very long, since a large number of orders were made against visitors who had overstayed. Legislative changes in June 1973 reduced its jurisdiction to hear appeals to landed immigrants, people with valid visas ordered deported on arrival, people claiming refugee status and people claiming citizenship. The Board's status and powers in these cases remained unchanged.

The Board holds hearings in Ottawa, Montreal, Toronto and Vancouver, and circuit hearings in Provincial capitals, and pays travel expenses for appellants

living over 100 miles away from the place of hearing. Appellants may be represented by counsel but must pay their own legal expenses. The rules of evidence and natural justice are observed.

Some minor changes have been made in Canada's new Immigration Act in 1978. There are new restrictions on appeal by persons claiming to be refugees if certified by the government to be of a subversive or terrorist class, but they may still appeal on legal grounds, though not compassionate ones. (This is consistent with the UN Convention on Refugees.) There is a liberalising provision for appellants abroad; they are to be allowed to return to Canada for their appeal so as to be present in person. Another new provision requires the Board, when it has allowed an appeal by the Minister, to consider a person for humanitarian discretion. Slight changes have been made in the general provisions on refugees; these concern procedure. The Board is to make a preliminary decision on whether a person is a Convention refugee or not; the question of entitlement to stay will be heard later. The Board's power to order the release of a detainee is now limited where a detainee is certified to be of a dangerous criminal, subversive or terrorist class. (This government certification has to be made by the Minister and the Solicitor General jointly.)

A very important part of the Board's discretion is that it may usually review all the circumstances of a case, not just the legal and technical ones.

Immigration Policy: Abundant information on the history and current state of policy is available in the Canadian Government Green Paper of 1974; it is in four volumes. A special Joint Committee of the Senate and Commons produced a Report in 1975 on the views of the public concerning immigration, and took evidence from hundreds of witnesses, including written and oral submissions from organisations and individuals.

History: In its early days, Canada encouraged immigration for work on the land, and most entrants came from Britain, northern Europe and the United States. There was a head-tax, set much higher for Chinese than for others, and Federal law forbade criminals, vicious classes and paupers from entry. There was no systematic machinery of control until 1907, when a new statute set up an immigration service and empowered the making of regulations by the responsible Minister. Under the new regulations, Indian and Japanese entry was limited. In the early years of the twentieth century, many immigrants from eastern Europe arrived.

After the First World War, there was severe unemployment. Anxiety to end this combined with racial feeling and hostility to former enemy aliens to produce a very restrictive era. The effective exclusion of Indian immigrants was debated at the Imperial Conference of 1919, which decided in Canada's favour. Various classes of alien were excluded for the first time: strike-leaders were made deportable, and alcoholics, illiterates and conspirators were added to the

prohibited classes. In 1923, the Chinese Immigration Act banned Chinese entry altogether. Some restrictions were gradually relaxed during the 1920s, but the crash of 1929 caused renewal of very strict controls, which lasted until after the end of the Second World War.

Since 1946, policy has gone through a series of revolutionary changes, of particular interest to us in the United Kingdom at the moment, since their effect has been to reverse in a fairly short period a long history of racial restriction, *although control and selection have continued.* Since 1960, Canada has been struggling to find the best answer to the question: how can you maintain control over immigration while at the same time pursuing a liberal, humane and internationally acceptable line of action and meeting the major objectives of domestic policy?

In 1946, strong demand for entry from refugees and displaced persons coincided with political pressures within Canada to liberalise the severe restrictions of the inter-war years. Mr. Mackenzie King wanted to enlarge the population as a whole for the sake of long-term development, but he did not want to abandon racial restriction. Politicians were afraid of serious unemployment again, as in 1918. These conflicting concerns were temporarily resolved by a programme of sponsorship for close relatives which would expand population without altering racial balance, and by the systematic admission of refugees and displaced persons. The Churches and various ethnic organisations played an important part in the latter policy, with their voluntary work in helping settlement. The Chinese Immigration Act was repealed to allow sponsorship of Chinese relatives.

By 1950, most eligible relatives had been admitted; the sponsorship scheme was slowing down, but at the same time it had become evident that there were labour shortages for many kinds of work. New regulations therefore empowered the Minister to admit anyone he found suitable from among the 'preferred nationalities' (which were from all parts of Europe and the Middle East). However, according to the Canadian Green Paper, 'Blacks were held to be inadmissible unless they fell in the preferred classes, or were the spouses or minor children of Canadian residents'.

Early in 1951, agreements were signed with the governments of India, Pakistan and Ceylon to accept limited quotas of immigrants from those countries. At the same time, assisted passages and loans were authorised for selected workers. Sponsorship was extended to relatives in any degree, and various classes of unsponsored worker approved. In 1955, a quota was approved for domestic workers from the Caribbean. There were many fluctuations of policy in the 1950s. The new measures caused immigration to rise sharply, but it was still easier for the 'preferred nationalities' to come than for others. The sponsorship system was bringing in a lot of people whose work-skills did not fit with the Canadian labour market's demands, and with recession in the late 50s many of them were unable to find work.

Pressure to get rid of racial discrimination in immigration policy had grown. Despite unemployment, this pressure achieved, in 1962, a compromise measure. A single set of rules was to be applied to all nationalities equally, concerning the immigration of unsponsored entrants (i.e. workers not related to anyone in Canada). But the sponsorship rules would still allow a wider range of relatives to be brought from the traditional source countries than from others.

The White Paper of 1966 shifted the whole emphasis of policy away from family sponsorship and towards labour needs. New regulations followed in 1967, eliminating racial or national discrimination towards all classes of immigrant, reducing the sponsored classes, setting out detailed criteria for unsponsored immigrants, and establishing a new 'nominated' class of relatives who had to meet most, but not all, of the same requirements as the unsponsored applicants. An applicant's various possible qualifications for entry were to be assessed by means of a new 'points' system (see below).

For some time before 1967, many frustrated applicants had entered Canada as visitors and simply stayed on without going through the selection process. The problem of how to be fair to them and to unsuccessful applicants outside too was resolved, not by fierce new controls, but much more sensibly by permitting visitors to apply from within Canada for permanent settlement, while making the requirements for them rather more stringent than for people applying from outside.

The Department of Manpower and Immigration was established in 1966, and the new Appeal Board in 1967 (see above under 'Authorities' and 'Appeals'). In 1969 Canada adhered to the UN Convention on Refugees, but there was little more than formal change as a result since a generous policy of admission and support was already being followed, both for refugees who fell within the Convention definition and for oppressed minorities of various kinds. Co-operation with Churches and voluntary organisations in this policy had been continuous. The well-established system which had developed since the war worked promptly and efficiently in 1972, when Canada organised the reception of a number of expellees of Indian descent from Uganda with the minimum of bureaucratic fuss.

The 1967 Points System: Under the 1967 regulations, an independent applicant was to be judged according to nine factors, which had a combined potential value of 100 units, or points. The points-values of some of the factors are varied according to economic conditions in Canada at the time. Anyone scoring over 50 points is likely to be accepted.

There are five long-term criteria: education and training (any number of points up to a maximum of 20); personal qualities (15); occupational demand in Canada (15) occupational skill (10) and age (10). The four short-term criterai are: arranged employment in Canada or designated occupation (10 for either; one may not score on both); knowledge of English (5) knowledge of French (5)

or both (10); presence of a relative in Canada (3 for any relative, 5 for a relative in the place of destination) and employment opportunities in the area of destination (5). Under the 1976 Immigration Act, this points system has been amended so as to put more emphasis on an applicant's employability.

In addition, an applicant must have sufficient means to support himself or herself, and family, until successfully established in Canada. No fixed sum is specified; an assessment is made for each applicant.

Selection officers have discretion to accept or reject applicants, irrespective of points gained, in exceptional cases and with the concurrence of a senior officer. In most such cases, discretion has been used to admit, not to refuse. Both the exercise of this discretion, and the awarding of points, obviously require a selection service with high standards of honesty, intellect and human understanding.

Help with settlement: A large part of a Selection Officer's job is counselling; great trouble is taken to inform applicants about opportunities and problems they may find on arrival. There are also Provincial government offices overseas; the Quebec government for example encourages applications from French-speakers.

In addition, there are reception services at ports of entry to provide advice, including a 'Welcome Kit' prepared by the Employment and Immigration Commission, and practical help if necessary. Commission offices in various parts of the country co-operate with services provided by other levels of government and by voluntary organisations so as to help newly-arrived entrants through the various stages of their new life until they are settled. Interim financial help is available in emergencies. Language training will be provided where language deficiency is hampering a person's employment.

For a fuller account of the whole system, for which there is unfortunately no space here, readers are referred to the Canadian Government Green Paper of 1974, Vol. 2 *The Immigration Program.*

The new Act: The 1976 Immigration Act has come into force in 1978. It was drafted only after the exhaustive enquiries which produced the Green paper and the report of the Parliamentary Special Joint Committee in 1975.

A striking new feature is a statement in the Act itself of the objectives of Canadian immigration policy (Part I, s.3). All the rest of the statute is based on these objectives. They include commitments to non-discrimination on grounds of race, national or ethnic origin, colour or sex; to the fulfilment of Canada's international legal obligations and to the upholding of her 'humanitarian tradition with respect to the displaced and persecuted'; to fostering a strong economy and the prosperity of all regions of Canada (this indicates concern with Provincial interests, not only Federal ones); enriching the cultural and social

fabric of Canada; facilitating reunion of citizens and residents with close relatives abroad; promoting co-operation between Federal and other levels of government and between them and voluntary agencies; to facilitate the entry of visitors; to support government demographic goals; to maintain the health, safety and good order of Canadian society, and to promote international order and justice by denying the use of Canadian territory to persons 'likely to engage in criminal activity'.

The entire policy on entry, for immigrants, visitors and refugees, is thus unified and set in the context of national policies as a whole.

The new Act provides for three admissible classes of immigrant: refugees, the family class, and others, the last-named to be admitted on the points system. Old legislation excluding the so-called 'prohibited classes' is repealed and replaced by definitions concerning public health and the exclusion of those involved in terrorism and organised crime. There is a new emphasis on Federal-Provincial co-operation in immigration policy and annual target figures (not ceilings but rough estimates) are to be set annually for the succeeding year's expected immigration total, and publicly announced.

There are new measures designed to prevent overstaying, as illegal immigrants, by visitors. Any visitor who may want to study or work in Canada after arrival must obtain a visa before travelling; visitors will not be able to apply to work or study from within Canada. There is to be a system of departure notices (which will, unlike deportation, have only temporary effect) for visitors in breach of conditions.

Some features of the new Act have worried church and civil liberties groups. The executive is to have increased discretionary power to make regulations. Officials have new powers to impose conditions of stay. Adjudicators, who are to hear ordinary deportation cases will not in fact be independent of the immigration department, according to some critics; they will be department employees. There is a provision to deport people who might in the future, in the opinion of the Royal Canadian Mounted Police or the security forces, engage in violent or subversive acts. It will be possible to deport permanent residents who are not Canadian citizens if they are suspected of being security risks. There have been complaints about the speed at which the Committee and Report stages of the Bill were taken.

The compromise between liberalism and restriction which the Act expresses has, of course, been criticised from many quarters in Canada; there is no room here for a detailed discussion. The importance of the Act, from the point of view of the present Report, is its comprehensive character, and also the way in which it has clarified and set out the underlying objectives of policy, after detailed investigation of all the practical matters at issue.

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UNITED KINGDOM

Population: 56,000,000

Migration's effect: Net emigration. From 1971 to 1976, the net loss through migration was 219,000 people (International Passenger Survey figures).

Employment situation: The official figure in December 1977 was 6.1% unemployment. There was considerable regional variation. Northern Ireland, with virtually no immigrants at all, had 11.2% unemployment; Scotland, Wales and North, with comparatively few immigrants, over 8%; north-west, south-west and East Anglia over 7%; Yorkshire, Humberside and Midlands, with a higher proportion of immigrants, over 5%; Greater London and the south-east, with more immigrants than other areas, 4%.

If the effect of immigration on employment is to be described here in terms comparable with those used to describe other countries above, it is necessary to define immigrants in broadly the same terms used everywhere else. 'Immigrants' here therefore means non-citizens present on a temporary or a settled basis. Unfortunately it is impossible to give exact statistics on this definition, because the word 'immigrant' is usually used in the UK to mean the black and brown part of the population, whether they are immigrants from elsewhere or citizens; sometimes the term includes white foreign migrant workers, but it excludes patrial (white) Commonwealth immigrants. Official statistics have several different ways of grouping the people concerned: none of their bases coincides with the definition of 'immigrant' commonly used in other countries.

If we take 'immigrants' to mean non-citizens who have come in from outside, the longest-established groups include Irish, West Indians and Italians, many of whom have been here around twenty-five years without changing their citizenship status. (Most Poles, Ukrainians and Yugoslavs who have been here since just after the war have become citizens. So now have most immigrants from Pakistan, who began coming in the late 50s.) Indian and Bangladeshi immigrants have been here for up to twenty years; there are much smaller long-standing groups of Spaniards, Portuguese, Cypriots, Hong Kong Chinese, Australians and West Africans. Recently, there has been a marked movement from South Africa and the Philippines. This list is far from being exhaustive.

All these groups between them work in a very wide variety of jobs indeed: from teaching and accountancy to tailoring and brickmaking. A higher proportion of the immigrant than of the citizen workforce is in manufacturing industry. Many are in service industries, such as transport, the Post Office and hospitals, and many in catering.

Since 1973 the issue of work-permits to non-patrials has been very strictly limited; doctors, entertainers and some others may enter without a permit, but their numbers are very small. The country to receive the most work-permits recently has been the United States, followed by Japan, Spain and Colombia.

There is a quota for the catering and hotel industry, within the permit system; only skilled workers may now come in this category.

Immigrant workers play an important part in the economy: some as highly skilled workers in major industries (American oil technicians, West Indian skilled car workers) others doing unpopular jobs, like night shift work in textiles or foundry work, others in essential services, especially hospitals, and in the service of the tourist trade in hotels and catering, which have consistently failed to attract native workers.

Civic rights: There is no clear distinction, as in most countries, between the civic rights of immigrants and of citizens. This is because of the confusion and complexity of British nationality law. Immigrants fall here into four groups: Irish, Commonwealth, EEC-alien and other alien. The first two groups have full civil rights in the UK (voting, serving on juries, standing for office); the others have none of these. But EEC aliens may acquire certain rights in the next few years under EEC law.

Standard of living and social benefits: The standard of living is somewhat below that of the other countries described above.

There is a serious housing shortage, since much of the housing stock available is either substandard, or away from the areas of higher employment where the housing demand is greatest, or does not match the demand (e.g. accommodation for single men, and any kind of reasonably-priced unfurnished accommodation for anyone, are very difficult to find.) Many houses are kept empty by local authorities and private companies.

Tuition in primary and secondary schools is free of charge and available to most residents, whether citizens or not, but children whose passports show only a short-term permission to stay are refused school places.

Tuition in Universities is not free, but mandatory grants (means-tested) can be obtained by any intending student who has been ordinarily resident for three years in a local authority area. In January 1978 the Department of Education and Science issued a circular to local authorities advising them to have regard to the term 'ordinary residence' as applied in tax and divorce cases. Such an interpretation would be much more restrictive than the one in use up to now, and would exclude people who had any conditions attached to their stay in this country. Persons defined as 'overseas students' (a category which includes some non-patrial children of UK citizens) must not only pay fees but must pay them at a higher rate than UK students.

Language tuition to migrants is not organised on a national basis, but the teaching of English as a second language is provided in schools or special centres in many areas. Adult tuition is provided in some work places. There is no unified system.

Taxes are high, as in other West European countries. The National Health Service provides free treatment by hospitals and general practitioners, and subsidies medicines and dental care. It is available to all citizens, immigrants admitted for settlement, immigrants on work permits, EEC citizens, and some foreign nationals from countries which have made reciprocal health agreements with the UK. Anyone at all can obtain free emergency treatment for very urgent need. However, in recent years the NHS has not always in practice been available to all those legally entitled to use it. Passports have been demanded in many cases by hospitals before treatment was given. (In 1976, Leicester General Hospital's ante-natal clinic refused ante-natal care to an Indian woman who refused to produce her passport; she had previously had a confinement at the hospital and was entitled to treatment.)

Unemployment and sick pay are available to all who pay National Insurance contributions, whatever their origin. Social Security is paid to people of any origin at discretion; the criterion is the need of the applicant. Legal aid is available at the discretion of a magistrate; the person asking for it has to submit to a means test. Trade Union membership is available to anyone, of whatever origin, but since the 1971 Immigration Act came into force, some workers admitted under it on temporary permits have been nervous of engaging in Trade Union activities, since their stay here is dependent on their employer's recommendation.

There has never been any systematic attempt to provide information for intending migrants. A guide for Commonwealth Immigrants was published by the Home Office and the Central Office of Information in 1972, but it is not readily available and is not on the COI list of publications. The Home Office has also published information on our immigration law; this is now outdated since changes in the Rules have been made since publication. The Department of Employment publishes a booklet of guidance for overseas workers, which is issued to employers here for them to forward. The information available is all in English.

Authorities responsible for immigration: The entry and stay of overseas nationals (and of British nationals subject to immigration control) is controlled by the Home Office, but the approval of employment for the very small numbers of work-permit-holders is the responsibility of the Department of Employment. The system of entry clearance overseas comes under the Foreign Office, which employs entry clearance officers from its own ranks together with some (mostly found in the Indian sub-continent) transferred from the Home Office.

Within the UK, police and immigration officers have powers under the 1971 Act to arrest without warrant anyone they have reasonable cause to suspect of an offence under sections 24 and 25(1). They may also enter premises without warrant to search for illegal immigrants. Securicor, a private security organisation, is employed to guard detainees at Heathrow.

Aliens, but not Commonwealth or Irish citizens, must register their addresses with the police.

Immigration Appeals: An appeal system was first set up in 1969. Appeals can be made by non-patrials against exclusion from the UK, conditions of stay, deportation, validity of directions for removal and the place of destination in cases of removal. The appeal goes in the first instance to an adjudicator, appointed by the Home Secretary. Appeal against his decision may be made, with leave, to a three-person tribunal appointed by the Lord Chancellor (Certain limited classes of deportation appeal go direct to a tribunal.) Final appeal can be made to the Home Secretary, but to a Court only exceptionally, through use of one of the prerogative writs. Legal aid is not available to appellants, but they are offered representation free of charge by the government-sponsored UK Immigrants' Advisory Service; if they prefer, they may ask another voluntary body to represent them or may pay for a lawyer. Over 90% of appeals are refused.

Immigration Policy: Since entering the EEC on 1 January 1973, the UK has been part of a common labour market with eight other countries and there is free movement of labour between it and the rest of the Community.

All other migration is regulated by the 1971 Immigration Act. The criterion for freedom of entry is not, as with other countries, citizenship or nationality, but a concept introduced in the 1971 Act: patriality. The authoritative definition of patriality is found in the 1971 Act, section 2. It is based on similar qualifications to those used in nationality law (birthplace, descent, adoption, naturalisation and registration) but in such a way that it does not at all coincide with British nationality. Patrials (free from control) include almost all white citizens of the UK and Colonies and about a million black ones born in this country or settled here, together with several millions of white Commonwealth-country citizens. Non-patrials includes everyone else in the world: some white Commonwealth-country citizens, almost all non-white Commonwealth-country citizens, and all aliens. The broadly racial distinction intended in the Act is not precise, but its inexactitude is in practice corrected by the Immigration Rules, which extend freedom of entry to UK and Commonwealth citizens with a UK-born grandparent, and also by the manner in which the Rules are administered by the Home Office. In practice, white non-patrials are often permitted to enter freely, while black patrials face difficulty in many cases. The policy is then effectively racial, but because the law is not explicitly racial it has been made very complex indeed: impossible for the layman, and difficult even for the lawyer, to disentangle.

The policy laid down in the 1971 Act shows a very liberal attitude towards immigration provided it is white. Under the Act, together with EEC law which now binds us, well over a hundred million white people are free to enter at

anytime. Most of these (those from the EEC) can remain permanently only if they succeed in finding work within six months of arrival, but there is no restriction on Commonwealth patrials at all. The system of control for non-patrials is very restrictive indeed – so strict that the Department of Employment has recently been concerned about a possible shortage of labour in industries which rely heavily on migrant workers, even at a time of high unemployment, to fill essential jobs that are unattractive to the native population.

A work-permit is issued only to a named worker for a specific job with a specific employer, who must prove that the employment of an overseas worker is necessary and that there is no suitable resident labour available for the post. Moreover, only certain categories of work can be considered, all of them skilled. A permit is issued for a maximum of 12 months. The worker may not leave or change his job (even if he stays with the same employer) without permission from the DE. If he leaves or loses his job he has no right to remain. He may apply for extension of stay, a year at a time, for the next three years, to the Home Office; any change of employment must be approved by the DE before such extensions are granted. Only after four years altogether in approved employment may the worker apply to the Home Office for removal of the time limit on his stay; if the Home Office then agrees to remove the time-limit he may remain and be free to choose where to be employed.

Most work-permits in recent years have gone to foreign nationals, very few indeed to Commonwealth non-patrials. From 1973 to 1977 the total of long-term (i.e. 12-month) permits issued was made up as follows: in 1973, 12,592 foreign and 2,102 Commonwealth; in 1974, 11,110 foreign and 2,627 Commonwealth; in 1975, 10,435 foreign and 3,228 Commonwealth, in 1976 7,513 foreign and 1,864 Commonwealth, and in 1977, 5,165 foreign and 999 Commonwealth.

Certain categories of worker may be admitted without permits: doctors and dentists coming for specific posts; entertainers; ministers of religion; and a few very limited categories besides such as operational staff, but not other staff, of overseas-owned airlines.

There has in recent years been a numerical quota within which unskilled and semi-skilled workers have been recruited for hotel and catering, nursing auxiliary and domestic work; it has been set at 3,500 a year altogether in 1977 and 3,000 in 1978. It is now restricted to skilled personnel only.

In addition, non-patrial 'working holiday-makers' from Commonwealth countries are admitted for up to five years and allowed to look for and take employment at their choice. In practice, this permission applies only to white Commonwealth citizens, most of them Australian.

The principle of family reunion is given very limited scope indeed in UK immigration law. EEC nationals may bring dependants as defined by EEC law, which is comparatively generous, but other non-patrials have a statutory entitlement to bring in only wives and children under 18, and then only if the

man has been settled here since before 1 January 1973. All other admissions of relatives are discretionary, under the application of the Immigration Rules. Wives and children of persons admitted after 1 January 1973 are at present admitted if they can be supported and accommodated. Even the wives and children who have statutory entitlement to enter have to face long administrative delays if they apply in the Indian sub-continent (there have been delays in Bangladesh of as long as three and a half years before first interview) and some of them have been refused on the gound that they are not really who they say they are. (The Runnymede Trust published in 1977 a study of the entry procedures in the Indian sub-continent which found that in 58 cases of refusal where refusal was upheld on appeal, 55 applicants were genuinely entitled to enter.)

The entry of husbands and fiancés of settled residents, permitted at discretion under the conditions laid down in the Rules, was restricted by amendments to the Rules in March 1977. Admission is granted only provisionally for 12 months, after which the husband concerned will be removed from the UK if the Home Secretary thinks the marriage was not genuine. 'Not genuine' here means a marriage entered into for purposes of evading immigration control. A marriage can be valid in civil and religious law, but still be declared not genuine by the Home Office. Women fiancées however may enter and remain provided they marry within three months of arrival.

Non-patrial citizens of the UK, having no other citizenship, are subject to the same entry control as other non-patrials. However their entitlement to *eventual* admission is acknowledged, and there is a numerical quota under which vouchers are issued to heads of households in East African countries so as to regulate the entry of these UK citizens. The quota is set at 5,000 a year, but has not been taken up in full for some time. However, it has been mainly restricted to UK citizens in East Africa (there are some 25,000 of them in India.)

These citizens are confusingly referred to, officially and unofficially, as 'immigrants', and have a special section of their own in government statistics as UKPH (United Kingdom Passport Holders). They are distinguished from other non-patrials in one important respect; they cannot be removed or deported, since there is nowhere else to accept them.

All other non-patrials (except Commonwealth citizens resident since before 1 January 1973) can be removed or deported under the provisions of the 1971 Act, for breaches of the Act, or if they become in-patients at mental hospitals, or if they are convicted of a crime and recommended for deportation by a magistrate. If a non-patrial head of household is deported, the Home Secretary has power to deport his wife and dependent children also, even if they have committed no offence.

The settled Commonwealth citizens who are not subject to deportation are those who have been living here since before 1 January 1973. If a deportation order was made against a Commonwealth citizen before he had completed 5

years' residence, however, and has not for some reason been served on him, he is not settled and can still be deported.

One other category deserves mention here, though it is not mentioned by name in our immigration law: refugees. In the Rules, not the Act, the Home Secretary is empowered to admit people in search of asylum who fall under the definition of a refugee in the UN Convention on the Status of Refugees. Many individuals who are in effect refugees fall outside the Convention's definition: these are usually not admitted, though exceptions have been made. There is no positive policy on admission of refugees in general.

The very restrictive régime imposed on non-patrials does not represent, it must be emphasised, the *whole* of UK immigration policy. Just as important is the very liberal régime for EEC and Patrial Commonwealth citizens. We have very close restrictions on one group, virtual laissez-faire for the other, and the line of difference is effectively a racial one.

Some possible consequences of this two-sided policy have not yet been evident, because it so happens that the coming into force of the 1971 Act and our entry into the EEC both coincided with the great economic change that occurred in the entire industrialised world with the sharp rise in oil prices, and also with other economic factors, which have meant that since 1973 we have not been at all attractive to migrants (except of course for persons trying to join immediate family members here). If, however, there were to be an economic recovery in the UK and an expansion of job opportunities, it would rapidly become plain that we had no control at all over the entry of large numbers of people, skilled and unskilled, from EEC and Commonwealth countries. Political upheaval in southern Africa could push large numbers of white people able to claim UK citizenship out of Rhodesia and the Republic of South Africa – immigration from the latter is already increasing. The entry of Spain and Greece into the EEC could mean an increase in migration from those countries, which are poorer than we are. In any of the above cases, it would suddenly become evident not only that our policy was racial – that is pretty evident already – but that we do not, racial considerations apart, have any immigration policy at all.

4. IS THERE A GENERAL THEORY OF IMMIGRATION POLICY?

1. Legal

There is a generally acknowledged international principle that every State has the right to determine its own immigration policy. But there are other generally agreed principles, to which States are expected to conform, which modify the ways in which this right can be exercised. 'Considering the universal restrictions placed on immigration in this century, and the almost total exclusion of aliens by some countries, it is surprising to discover that there is a widespread consensus of opinion, particularly on the Continent, favouring *a general duty in international law to receive aliens.* [my italics] The doctrine of Vittoria that commerce is an inherent right manifesting the real community of mankind is not only important as precipitating modern international law but is also viable in our own time.'* There have been many international agreements on migration and on the treatment of aliens, made since the end of the First World War, but they do not represent a purely modern concern with the issues. On the contrary: their roots go deep into the past. Vattel, in the eighteenth century, argued that a State might supervise the entry and residence of aliens, but for reasons of self-defence, or what would now be called national security; he did not acknowledge a completely arbitrary power to exclude. There was already a doctrine that foreigners in distress should not be refused entry: a doctrine anticipating modern agreements on the reception of refugees. 'Great tenderness is shown by our laws,' wrote Blackstone in his *Commentaries* (1765)' not only to foreigners in distress (as it will appear when we come to speak of shipwrecks) but with regard also to the admission of strangers who come spontaneously.'† Economic considerations are certainly not new. For centuries States have attempted at different times to regulate the labour market by encouraging the entry and settlement of skilled workers or by imposing disabilities on alien workers; international law has long been concerned with this matter too. The Institute of International Law and Codification in 1891 rejected the idea that a State might whimsically exclude aliens, and held that protection of the worker from competition was not, of itself, sufficient justification for exclusions. This anticipated the principles on which the ILO based its draft convention on migration in 1949.

* *International Law:* D. P. O'Connell, (Stevens 1970) Vol. II. p. 695.

† Vol. I. pp. 252.

Contemporary international law applies long-established traditional principles to present circumstances. Of course it also incorporates new ideas too; Communist countries have not been alone in urging the claims of economic security, and the notion that an individual has a right to work, and to decent conditions of work, now stands alongside the older notion of the right to political liberty. The latter principle is the basis of Article 12 of the UN Covenant on Civil and Political Rights which says that, 'Everyone shall be free to leave any country, including his own'. The former is the basis of ILO Coventions, specifically concerned with the right of the worker to move between countries in search of employment. In short, international law acknowledges the right of States to *regulate* the admission of aliens on to their territories, but requires that this regulation should be exercised in obedience to agreed general rules governing the movement of individuals between States, and these rules are themselves based partly on long-established traditions of international law and partly upon newly-developed standards.

There are, of course, differences of opinion concerning the relationship between international law and United Kingdom domestic law. The purpose of this section is not to dispute that question, but to indicate the kind of standards set by international agreements, to many of which this country is party.

The International Covenant on Civil and Political Rights (1966) re-states many of the provisions in the United Nations Universal Declaration of Human Rights (1948). The principle of non-discrimination is emphasised, as it is in all recent international instruments:

Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2).

The rights of the family are also asserted:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State (Article 23 (i)).

and the freedom of movement of the citizen:

Everyone shall be free to leave any country, including his own.

No one shall be arbitrarily deprived of the right to enter his own country (Article 12 (2) and (4)).

The same principles are enunciated again in the European Convention on Human Rights (1950) and its Protocols. The European Social Charter (1961) specifically requires contracting States:

to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory (Article 19 (6)).

The International Labour Organisation published a Declaration in 1944, asserting that a central aim of national and international policy must be to enable all human beings, irrespective of race, creed or sex, to pursue their material well-being and spiritual development in conditions of freedom and dignity, of economic security, and equal opportunity, and specifically named an obligation on the part of States to achieve:

the provision of facilities for training and the transfer of labour, including migration for employment and settlement (III (c)).

Rules like these often have a wider application than may at first appear. The right to leave one's own country, for example, is meaningless, however willing one's own country may be to let one go, if there is no corresponding opportunity to immigrate into some other State's territory. (This is no mere theoretical problem; the fate of South Vietnamese refugees, living on boats and desperately seeking admission in one place after another, has demonstrated its reality all too harshly.)

Hence it has been held that 'the right of asylum is related to and in fact has as one of its bases the "right of emigration". The latter right has now been laid down in binding form in two international instruments of recent date, to wit Protocol No. 4, dated 16 September 1963, to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the International Covenant on Civil and Political Rights of 16 December 1961'.*

A general obligation on States to admit refugees is laid down in the UN Convention Relating to the Status of Refugees to which the United Kingdom is a party:

No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33).

The definition of a refugee in the Convention is a narrow one, which does not include many people colloquially called refugees. This applies only to a person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, unwilling to return to it.

Obviously this definition would not necessarily cover a person who left his own country to avoid military service for conscientious reasons, or people reasonably

* *Grahl-Madsen The Status of Refugees in International Law* Sijthoff (Leiden) 1972. p. 105.

fearing persecution for other reasons, or a person who was in his own country and applying from there for permission to enter as a refugee, even though he had a well-founded fear of being persecuted for any of the above reasons. The Convention definition sets, of course, a minimum standard and does not discourage States from admitting individuals who fall outside it. It should be read in conjunction with Article 14 of the Universal Declaration of Human Rights:

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

The practical problem, of course, with all these standards is not how far they are binding in general but how they are to be applied in particular. A State may admit a general obligation on its part to admit refugees, but which ones shall it take, how many and when? There is constant pressure in the world at present upon individuals caught up in wars, persecutions and every kind of misery to seek admission to countries where they have some hope of peace and freedom: some such people fall within the Convention definition, and many do not. With the former group, there is a practical course open: co-operation with the UN High Commissioner for Refugees. For the latter, a State must develop its own policy as best it can in the light of its general international and moral obligations, and with regard to its own capacity to offer refuge. There is an absolutely clear obligation on a State to admit a Convention refugee who presents himself at a port of entry; its obligation to admit someone outside the definition is rather a moral than a legal one.

The practical difficulty of framing an immigration policy as a whole in conformity with the standards of international law is one of detail rather than principle.

Despite the increasing restrictiveness of many States in recent years, contemporary international law states quite clearly the general standards to which they should have regard, and its whole tendency is towards greater freedom of movement in general and the upholding of the rights of the individual, without distinction on grounds of race, religion, political opinion or membership of a social group, in particular. An immigration policy founded on these broad principles, and having special concern for the rights of refugees and the right of the individual freely to take employment and to enjoy family life without interference, would be wholly in the spirit of international law.

2. Economic

It has become so common in the United Kingdom to think of 'immigrants' as, in more senses than one, a race apart, that it is necessary to emphasise strongly at the outset what ought to be a self-evident truth. An addition to the working population that comes about through immigration has, from the economic point of view, much the same character as an addition to the workforce that comes about through the natural increase of the resident population. Most of the costs

and benefits of immigration can be reckoned in the same way that the costs and benefits of population growth in general could be. There are, however, certain characteristics peculiar to immigrant members of a country's workforce which reduce costs and increase benefits for that country.

There is little doubt that immigrant workers, in the short term, benefit a nation's economy. There are several ways in which they do this. Being much more mobile than the resident population, they can more easily be fitted into existing job vacancies. Unskilled (and some skilled) immigrant workers are willing to take dirty or unpopular or relatively low-paid jobs which the resident population avoids, even at times of high unemployment; in this way essential services and manufacturing industries can obtain labour which would not otherwise have been available to them. Highly skilled and professional immigrants can have an even more important effect: by moving into posts which no resident is able or willing to fill, they can stimulate the employment of resident skilled and unskilled workers by contributing to the maintenance or expansion of an existing concern which was foundering for lack of just such a contribution. At the same time, immigrant workers in the short term contribute much more to public funds than they take out. The cost of their upbringing and education has already been borne elsewhere. They pay taxes, but as a group receive less benefit than residents as a whole, since they are not drawing old age pensions or making the heavier demands on health services that older people do. Usually they are willing to take housing which is of a lower average standard than the resident population demands, so that they do not, again in the short term, contribute to a housing shortage.

It must be said, however, that some economists are doubtful of the benefits even of short-term immigration. They argue that employers use immigrant labour as a substitute for capital investment, so delaying improvements in productivity, and that immigrant labour depresses wage levels and holds down the rate at which wages of all workers rise. There are counter-arguments and examples to these points and sometimes the same argument is used on both sides. Where, for example, it is argued that immigrants create extra demand for consumer goods, some economists deplore the fact, calling it a cost of immigration; others welcome it as a contribution to growth.

A point often made is the effect of immigration in achieving economies of scale. Economy of scale means moving towards the minimum cost of a unit of production. Where, for example, a car factory is set up so as to be able to produce a million cars in a year, the cost of manufacturing each car is much lower when the whole of the factory's potential is being used, and a million cars are being produced, than when it is only succeeding in producing half a million. The cost of capital investment has been the same in both cases; the cost of maintaining a distributive network and a spares service, and of advertising, have been the same and so on. The achievement of economies of scale depends upon

having an adequate labour force to produce the maximum number of cars and on demand for cars, on an expanding market. Immigration helps both to supply the labour force and to add to the consumer demand for cars. The same argument, modified, can be applied to the whole of a national economy as well as to an individual car factory.

There is a more dynamic version of the argument, summarised in Verdoorn's Law: productivity per man increases as total output increases. Verdoorn observed that, if you take two factories that are identical in all respects (wage-levels, capital investment etc.) except that the workforce is increasing in one and not the other, output per man-hour rises faster in the one where the workforce is growing.

This means that a factory with an expanding workforce can, because of this increase in each worker's productivity, make bigger profits, or cut its prices, or have longer production runs, or in other ways become more efficient and competitive than the factory whose workforce is static. Other western European countries have a head-start which the United Kingdom has not enjoyed, because they have consistently used immigrant labour to increase their workforces throughout the period since World War Two. We have never encouraged the immigration of workers on the same scale, and since the mid-1960s have actually imposed very close control on the entry of workers. (Ironically, the National Plan, now forgotten, which George Brown produced in 1965 for increasing productivity suggested, as one of the possible means by which rapid growth could be achieved, an immediate increase of at least 200,000 people in the workforce, to be supplied by immigration. The Plan was published about the same time as the government's White Paper on Immigration of August 1965, which reduced work-vouchers for the Commonwealth to a maximum of 8,500 a year, and in fact vouchers were issued in the succeeding years at a much lower level even than this. Alien immigration for work also remained tightly controlled, though more alien workers than Commonwealth ones were admitted in the late 1960s. For racial reasons, the possibility of using immigration for economic growth was stifled, and the other means for increasing productivity which the Plan proposed were never successfully used either.)

The concept of economic growth in which economists are most interested at the moment is growth of per capita income, rather than of Gross National Product. It would probably be generally agreed that immigrant workers have a beneficial effect on per capita income in the receiving society, though not so obviously or dramatically as on GNP. A recent Canadian Government enquiry into immigration came to the conclusion that the economic impact of postwar immigration into Canada had not been large, but that the most significant effects were to increase slightly per capita incomes and economic growth and to provide for a more flexible labour force.

A report of the Organisation for Economic Co-operation and Development (OECD) in 1975 suggested that more attention should be paid to co-operation between sending and receiving countries in shaping migration policy, but the

reasons behind this recommendation were not purely economic. The economic benefits to receiving countries were not questioned. In the 1950s and 1960s, western European countries were encouraging large numbers of guest workers to enter, at the same time as the free labour market between member countries of the European Communities was being developed. The assumption was that the system would benefit all parties: the receiving countries, whose growth was made much more rapid, the immigrants themselves, who could earn much better than at home, and the sending countries, which received remittances from their absent citizens.

(The sending countries were, of course, losing some of their workforce through emigration. But they were for the most part losing people who were making no contribution to the national product. This was either because they were unemployed or because they came from rural areas where their work did nothing to increase agricultural productivity. Thus their departure represented no economic loss, and their remittances after emigration did represent a gain.)

But by the 1970s, doubts had crept in. The distinction between short-term and long-term immigration, made in the 'guest-worker' policies, was proving artificial. Many 'guest-workers' were staying for long periods and bringing their dependants to join them. Consumption was increased as a result, and the stimulation of demand produced a need for more labour again. In a situation of rapid and continuing growth, immigration had become structural. The use of immigrant labour as a temporary device, to be replaced by new technology, was not working out. Many service industries were not easily altered by new technology; they still needed people. At the same time, the native population had come to regard certain types of work as 'immigrant jobs' and was unwilling to take them. (This phenomenon has been observed in all countries of immigration. The jobs concerned need not necessarily be dirty or menial. In Australia fairly recently, Chrysler and General Motors were advertising for car-workers and not getting them, even though there was 6% unemployment in the area. The reason was that these were 'immigrant jobs' in Australia; in many other countries, of course, car-factory work is highly regarded by the resident labour force.)

The authors of the OECD report suggested that some way should be found of breaking the cycle in which immigration of workers created further immigration of workers. Their reasons were social and political, rather than economic: that is, they were worried by native hostility to foreigners and by problems of assimilation, of discrimination and 'ghettoes'. One idea for breaking the cycle was to take capital investment to the countries where the labour was, rather than bringing the workers to the Common Market's industrial heartlands. Such schemes do not always work out in practice; investors are more interested in a return on capital than in providing jobs. There is, for example, a huge oil refinery between Catania and Syracuse, which was built with funds intended to develop employment opportunities in an emigrant region, but it is so highly automated that only a handful of Sicilians work in its disfiguring structure: Sicilians still migrate to Germany and north Italy to work.

In the long term, the children of migrants are added to a receiving nation's labour force. Not surprisingly, their ambitions at work are, in all countries, much more similar to those of the long-standing resident population than to those of their immigrant parents. They do not want 'immigrant jobs' for themselves. The children are an addition to the permanent population, so their entry on to the labour market does nothing to slow down the demand for immigrant labour.

Between the short-term effects of improved growth and greater mobility, and the long-term effects of addition to the resident population through natural increase, some medium-term effects are evident. Once the lone worker has acquired a wife and children there is a demand for more economic 'infra-structure', for housing, hospitals, schools and services — a demand which the work of immigrants themselves often helps to meet, and the meeting of which is beneficial to the receiving society in general. Immigrant workers also tend everywhere to save more than resident workers, so helping to reduce price-inflation and to contribute to long-term capital development.

At the same time, immigrant workers help to reduce cost-inflation. When migrant labour is readily available to employers, money wages do not rise so quickly as when there are labour shortages. A rise in money wages puts up an industry's cost – a fact which has been reiterated over and over again by British governments of both parties for the last two decades, when they have tried to establish some form of wage restraint so as to bring down the rate of inflation that has made us uncompetitive in international markets. When cost-inflation is kept down, the cost of the product is kept down as a result. The same amount of purchasing-money will then buy more products. Real wages rise when production costs are kept down. Thus it is paradoxical, but true, that, while the use of a flexible and readily-available migrant labour force will not increase money wages, it will raise the real wages of the community as a whole; this is just what has happened in other west European countries since the War.

A conclusion reached by the authors of the recent Green Papers produced in both Australia and Canada, each to discuss their own situations, is that, taking all the factors into consideration, the best results will be achieved by a steady, regular flow of immigration rather than by fluctuation to serve short-term needs:

*Adverse economic effects are lessened when an immigration program is maintained at stable levels in relation to the size of the domestic workforce . . . the significance of migration to domestic capital spending is to be found not only in the level of migration but also, and more importantly, in the stability of annual intakes.**

And:

It would be desirable not to have too much fluctuation in immigration, no more

* Australian Government Publishing Service 1977 *Immigration Policies and Australia's Population.*

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*so than it is desirable to have fluctuations in income and investment, because that generates cycles and instability in the economy that prove to be very costly.**

In both countries, of course, immigration is assumed from the start to be a process with long-term effect; immigration means entry for permanent settlement. However, the distinction is evidently as artificial in their cases as in western Europe's. A heavy proportion of immigrants re-emigrates, so that part of the process turns out to have been a short-term one after all. (This again is a generally observed phenomenon. We think for example, of the United States as a country of immigration in the late nineteenth and early twentieth centuries. Yet from 1900 to 1914 over half the immigrants to the United States returned home again. In the 1920s and 1930s, emigration from Australia and New Zealand was between half and two-thirds the size of immigration. More recent figures for Australia and Canada are given in Chapter 3 above.) One could even suggest a general law: immigrants admitted specifically for a short period often stay for a long one; immigrants admitted for a long period often leave after a short one.

The Australian and Canadian emphasis on a steady flow, rather than on absolute numbers in proportion to the domestic workforce, reflects the fact that the size of immigration flow is not *in itself* an important economic factor. The important factors are to be found in the relationship between the various elements in the economic situation: between demand for labour and labour supply, between potential and actual growth, and so on. Sudden changes in the scale of immigration affect these relationships, sometimes with good effect, sometimes with bad. From 1974 to 1975, New Zealand received an exceptionally high number of immigrants: over 50,000, compared with the annual average of about 10,000. This sudden change caused great pressure on housing and also had a temporary adverse effect on the balance of payments, because consumption of imports rose sharply. On the other hand, West Germany, just after the war, received a sudden influx of immigration on a scale far beyond anything we are used to seeing in the contemporary world, with dramatically beneficial effect:

From the collapse of fighting on the Russian front to the 1950s, some 9 million refugees entered West Germany from the east . . . From then until the erection of the wall between the zones in August 1961, another 3 million refugees were added to the population. From these 12 million expellees and refugees, the labour force benefited to the extent of about 7 million . . . The expellees and refugees constituted one of the finest sources of additional labor in all of Europe. They were skilled . . . they were much more assimilable than the foreign workers . . . they were anxious to reconstitute their fortunes . . . And finally they were mobile . . . far in excess of the local population.†

* Report to Parliament by the Special Joint Committee on Immigration Policy, Ottawa 1975.

† *Europe's Postwar Growth* Charles P. Kindleberger, Harvard 1967.

At first the large numbers were thought of as a burden, but even by 1951 the refugees had come to be seen as indispensable for the recovery of Germany.

Of course sudden changes in the rate of immigration, on the sort of scale mentioned above, are likely to have very obvious and sometimes dramatic effects. Other kinds of population change too, if they occur suddenly, will have obvious effects. The great fluctuations that have taken place in the United Kingdom's birth-rate since 1945 caused the government to plan a very rapid expansion in teacher-training in the 1960s and then to cut teacher-training ruthlessly in the 1970s, with disruptive results. But dramatic economic change resulting from fluctuations in the rate of immigration is something the United Kingdom has never experienced in living memory. Even if we leave out of account the fact that there has been net emigration from this country since 1945, our gross immigration figures have been far lower than those for other west European countries in the same period, in proportion to total population. In the six years after the War, West Germany admitted immigrants each year at a rate of roughly 3% of its total population. New Zealand, in the year mentioned above, admitted immigrants whose number was about 2.2% of its total population. But even in our highest single year of immigration since the War, 1961, the United Kingdom admitted immigrants numbering less than 1% of total population. The proportion has now sunk to something like 0.2% a year. Most of the people in this tiny percentage are dependant relatives of workers who came earlier. The proportion of migrants, born outside the country, in our workforce is low in comparison with other industrialised countries. Fluctuations in such a minute proportion of the total could not be expected to have very dramatic effects here.

The importance of immigration to an economy, in general, is not always the same. Its likely effect has to be assessed in relation to all the other economic factors. On some occasions, immigration may be crucially important at a particular stage of development; at other times it may be almost irrelevant. Furthermore, the distinction between economic and other factors is often blurred, even by economists themselves: in discussing the long-term effects of immigration they tend to fall back to consideration of social, cultural and linguistic effects on society. It could, of course, be held that it is very difficult to discuss long-term consequences in purely economic terms, because the longer immigrants remain in a country the harder it is to disentangle their economic characteristics from those of the native population at large. Over the years they become less mobile; their patterns of consumption become more similar to those of the rest of the population than they were to begin with – they will want suburban houses, for example, and schooling for their children and in some cases they may no longer be performing an essential economic function by doing work for which there would be no native applicants. Where they stay in 'immigrant jobs' that others do not want, they perform this function over a long period. But an immigrant who came as a teacher, say, at a time of acute teacher shortage, may find after ten years that the expansion of teacher-training in the country where he went, together with a falling birthrate, have created a surplus

of teachers. He then finds it difficult to change his location or get promotion: at the same time, he has come to be in just the same economic position in society as members of the native workforce.

Such long-term effects of migration depend very much on events that are not foreseeable at the moment when immigrants are first admitted. Markets change; populations change in age, size and distribution; this decade's essential industry may be next decade's lame duck, and political events can radically alter economic structure. The policy-maker cannot ignore the future; he needs to consider the long term as well as the short. But at the same time he cannot know anything about the future with certainty: he must take a plunge on a guess. The same could, however, be said about any kind of economic planning and not only about the planning of immigration.

3. Moral

Take away justice and what are kingdoms but mighty bands of robbers?

St. Augustine

The Master said, "The wise man is informed in what is right. The inferior man is informed in what will pay

Confucius

Justice is the first virtue of social institutions, as truth is of systems of thought

John Rawls

It is easy enough these days to become cynical about politics, and to suppose that moral principles have no place in political affairs whatever, yet much political argument is still conducted in terms of moral principle. The provision of Child Allowances, for instance, is not justified by expediency alone. Moral judgments are implicit in the provisions of the criminal law. Immigration law is not exceptional here: moral considerations come into it.

Many of the important moral principles involved are embodied in current international law's definitions of human rights, and provisions to protect them. All major religions, and humanist thinkers too, admit the claim to compassion of the poor on the rich, of the sick on the healthy, and of the stranger on the person with a home: most widely-accepted systems of morality would ask a government to go further in liberalising immigration than legal obligations require. Pope John XXIII, for example, said in his encyclical *Pacem in Terris,* 'Among man's personal rights we must include his right to enter a country in which he hopes to be able to provide more fittingly for himself and his dependants.'

There is, on the other hand, an argument against liberalisation of immigration control which says that certain classes of person should not be admitted because of the interests of the sending countries. It has been said, for example, that the United Kingdom should not admit doctors from India because India needs doctors much more than we do. Such a view gives less priority to the rights and interests of the individual migrant, and to the rights and interests of the receiving

country, than to the interests of the sending country. The idea of justice to which this argument appeals is a utilitarian one, applied to international society as a whole, rather than to a single State. The classical utilitarian doctrine it rests on is the idea 'that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it'. It suggests, in other words, that we should base immigration policy on a theory of justice whose aim is the most satisfaction among the most people worldwide. The gain to Indian patients in having more doctors is judged to be much greater than the gain to British patients, who have a far higher number of doctors available already.

Such an argument certainly appeals to one's sense of what is right and fair, but it has its dangers. First, it blurs the question of responsibility on the part of States. If it would be better for Indian doctors to stay in India, is this not something India should decide upon, rather than someone else? Second, if the principle is admitted that we should pursue the greatest benefit to the greatest number worldwide, how far are we to go? Would we not also have to admit that the 'greatest net balance of satisfaction' would be achieved by banning the emigration of British doctors from understaffed hospitals in the north of England to highly-paid posts abroad? Third, it denies the right of choice to the individual migrant; it requires that his rights to move and to choose his employment are overridden by the claims of a greater social good. Fourth, there is very great difficulty in establishing what the claims of the greatest good may be. This is not just a matter of weighing the individual's good against the good of world society; it is a matter of calculating different probabilities, such as the relative wealth and poverty of particular countries in, say, twenty years' time. It would have been impossible to predict in 1955 that the Gulf States would now be so rich as to lure away British football coaches in the 70s; such a prophecy would have sounded lunatic.

Moreover, the very reasonable argument that one should not take highly skilled people away from poor countries often ignores the point that demand for them in their own countries is frequently not, in economists' terms, effective demand. Indian doctors, for example, have not left India out of mere greed but because there were not enough jobs for them there; if they wanted to stay, they could not do so and use their skills. Similarly, a Third World-country engineer cannot help his country where the capital is not available to develop the industry where his skill could be used. To be effective, the internationalist-utilitarian principle cannot be applied to migration control alone; it must first be concerned with investment, loans and trade agreements. Otherwise it risks lowering the net balance of satisfaction rather than raising it.

The three main types of moral argument employed in discussing immigration control are human rights arguments, compassionate ones, and utiliarian ones. The first two of these are firmly embedded in international law. The purpose of this section is no more than to indicate that such moral arguments always come into discussion of immigration, and to indicate the kind of forms these take

internationally: their domestic political implications are considered in the next section.

4. Political

Political theory has always been concerned with the aims and organisation of some clearly-defined association of people, forming a recognisable society of their own as a political unit. It has discussed the network of rights and obligations that exists within such a clearly-bounded society. It has not had much to say about the rights and obligations of outsiders while they are still outside. The position of resident aliens is often treated, but the questions of course arise after the aliens have become resident and not before. Political theory is not much direct help when it comes to immigration policy.

But it is of some indirect help. In judging whether a government has done the right thing or the wrong thing, whether it is doing something for the good of the country or not, we judge by the kind of standards we have learnt from whatever system of political ideas we have accepted. Most British people assume, for example, that freedom of speech is a sacred right and that a government is not justified in curtailing it. This firm conviction is not rooted in instinct but in the theory of liberty propounded by John Stuart Mill.

Similarly, we have generally accepted standards by which we judge whether a government has acted rightly in any other area of policy. Some of our oldest and most familiar standards have recently come under heavy attack, but they have not died: the belief that an Englishman's home is his castle and should not be invaded by officials against his will; the belief that a man should be held innocent until he is proved guilty; that everyone is entitled to a fair trial where his side may be heard before an impartial judge, and so on. We have surely a framework of ideas against which we can judge whether an immigration policy is a just one or not.

This is not the way the issue is usually put to us. What, we are more commonly asked, is in the best interests of the country? And so far as immigration is concerned, the answer looked for by the question is an answer in either racial or numerical terms: whether we want to keep the country as white as possible and whether we want larger or smaller numbers coming in. Any other interpretation of the country's best interests has had little discussion in the United Kingdom's political theory of immigration. But other countries have defined their own interests in quite different terms. The Singapore government, for example, has a simple system of down payments for an important category of immigrants: it uses immigration to make money. A larger population in the interests of self-defence has for a long time been an important part of Australia's immigration policy: France at one period deliberately used immigration with the help of a liberal nationality law to increase its armed forces. The defence of the nation is a possible priority in the political theory of a country's best interests. The important difference between this kind of political approach, and the one that asks whether an immigration policy is just or not, is that the former is concerned

with the interest of the State, as an entity, and the latter with those personal rights which it is a State's duty to uphold. The latter is, then, much the more genuinely democratic.

Most of us in Britain support the idea of democracy, and it is important therefore to be clear about the democratic means of determining an immigration policy. In recent years, a dangerous fallacy about democracy has crept into our politics. It is this: that whatever a majority decides upon must be right, because democratic government means the rule of the majority, and democratic government is right. This argument was foreseen as a danger to true democracy by one of democracy's most famous and most British publicists: John Stuart Mill again: 'The limitation of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community – that is to the strongest party therein.'

Herbert Hart has called the view that the majority have a moral right to dictate how all should live, 'moral populism'. He says of it:

The central mistake is a failure to distinguish the acceptable principle that political power is best entrusted to the majority from the unacceptable claim that what the majority do with that power is beyond criticism and must never be resisted. No one can be a democrat who does not accept the first of these, but no democrat need accept the second. Mill and many others have combined a belief in a democracy as the best – or least harmful – form of rule with the passionate conviction that there are many things which not even a democratic government may do . . . no one should think even when popular morality is supported by an 'overwhelming majority' or marked by widespread 'intolerance, indignation and disgust' that loyalty to democratic principles requires him to admit that its imposition on a minority is justified.

This point is of special importance to immigration policy, because racist or anti-foreigner arguments against some particular kind or number of immigrants – not only in Britain but in many other countries too – often appeal to the fact that majority opinion is on their side as an absolute justification for exclusion of any disliked group. There are two points here: one is that the fact is often not a fact, or at least cannot be proved to be a fact: those who are fond of claiming that the majority is on their side frequently make appeal to a *silent* majority, or proclaim their own ordinariness as proof that whatever they personally believe, all ordinary people, whom they imply must be in the majority, must believe too. The other is that, even if it could be shown to be a fact that a majority support a racist law, or a law forcibly to keep husbands and wives apart, such laws could not be justified as democratic. They are, on the contrary, anti-democratic: they override the personal rights of individuals and deny equality of treatment to minority groups.

In a democracy, moreover, it is reasonable to argue that the best interests of the State itself are better served by a respect for justice, and care for the rights of individuals, than by yielding to racism. There is no society in which racism has

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flourished in which it has not proved to be an appallingly destructive force – destructive, first, of the liberty, security, livelihood and even lives of the racially despised group, and eventually, if unchecked, of the fabric of the State as a whole. It is a dangerous force in any part of public policy, whether an immigration or a domestic one, and to resist it is the sensible course for a State pursuing its own naked self-interest just as much as it is the right course for a State pursuing the proper end of political action: the just society.

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5. THE ALTERNATIVES FOR THE UNITED KINGDOM

'Immigration law in this country has developed mainly as a series of responses to, and attempts to regulate, particular pressures, rather than as a positive means of achieving pre-conceived social or economic aims.'

These are the opening words of the Home Office's written memorandum submitted to the House of Commons Select Committee on Race Relations and Immigration in February 1977. The Select Committee took not the slightest notice of them. But in fact these words are very remarkable indeed. They say something both true and important about the history of our immigration law from its beginnings to the present day, and at the same time they challenge the reader to ask himself just what aims an immigration policy ought to have.

The authors of the Home Office memorandum deserve our warmest thanks for stating the problem. They did not go on to analyse it very much, but then analysis was a task for the politicians they were addressing themselves to. That the Select Committee completely ignored their challenge was not their fault.

Why have British politicians never asked themselves what the aims of an immigration policy should be? Ever since entry to the country was first systematically restricted in 1905, the political debate giving rise to demand for legislation has centred round demands made from the Right of the current political grouping to exclude a certain kind of person, defined by national or racial characteristics. No demand for an immigration policy has ever been made from any other quarter; the assumption always made by the opponents of such demands has been that the best policy is created by permitting maximum freedom of movement. Also, the way in which the demands for immigration legislation has always been made has forced opponents to argue in the terms that the restrictionists have set: they have felt impelled, first and foremost, to protest that the latest measure of immigration control was unjust and inhumane, and only secondarily that it was foolish and pointless. The initiative having rested so often with the restrictionists, the whole flavour of debate on immigration has always been a disagreeable one, and nobody has cared to enter it spontaneously except from the extreme restrictionist side. The result has been a paralysis of effort on the more broadly liberal side of politics, the only quarter from which *positive* policy proposals could have come.

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All the terms of debate we are now used to were formed at the very beginning, in 1905. In the Commons debate of May 2nd, Mr. H. Lawson complained:

The man power behind the Empire is not likely to be improved by the introduction of new diseases and the constant influx of people dumped down on this country because no other country will take them . . . I think it is time we cried 'Halt!' to what is becoming a backward march to physical degeneration.

The people whose influx he disliked were Jews from Eastern Europe (ancestors, incidentally, of a large cross-section of the best-known British people of today). Major Seely protested:

It is not for a Christian people to begin this sinister form of legislation. We can now say that where a man is naked we clothe him, where he is a stranger we take him in.

There followed a very lengthy argument over the exact numbers of Jews coming in; rival figures flew across the House, with the Bill's proposers claiming that Jews were overcrowding our cities and taking jobs and homes from the native population, while the opposition pointed out that the majority of those who entered were in transit to the United States, since a cheap fare from Liverpool was available that could not be matched from a Continental port: therefore the total entry figures were highly misleading. It was claimed that the Bill was necessary because of the fears of the British working classes. Keir Hardie rejoined:

The Rt. Hon. gentleman the member for West Birmingham has expressed concern as to the views of the working classes on this question. I can assure him that there is no demand for this Bill from the working classes.

The debate was then lifted on to the plane of total national interest by the Prime Minister, A. J. Balfour, who spoke of:

– the problem whether or not an individual country has or has not the right to decide who is to be added to its community from outside and under what conditions . . . we are amply justified by every principle of law and every principle of morality in determining for ourselves under what conditions we shall or shall not admit citizens of other nations to take a share in our civilisation, our industries and our social life.

Now the Rt. Hon. Baronet the Member for the Forest of Dean [*Sir Charles Dilke*] *laid down the proposition that in considering the problem we need scarcely ever consider the question of race . . . I think he pushed the proposition a little too far . . . If there were a substitution of Poles for Britons, for example, though the Briton of the future might have the same laws, the same institutions and constitution, and the same historical tradition learned in the elementary schools, though all these things might be in the possession of the new nationality, that new nationality would not be the same, and would not be the nationality we*

should desire to be our heirs through the years yet to come . . . Unrestricted immigration may become a great national evil . . . unless we do something we must remain the sieve in which the useless dregs remain . . . we are the sieve through which the good immigrant goes while the bad immigrant stays. . . . The foreign immigrant first drives the British workman out of Whitechapel and then the small remnant has to pay the rates in order to carry out the sanitary arrangements and the Poor Law arrangements which are to remedy the state of things of which he is the victim . . . In my view we have a right to keep out everybody who does not add to the strength of the community – the industrial, social and intellectual strength of the community.

This last phrase rings ironically in the ears of anyone now even vaguely aware of the industrial, social and intellectual strength added to this country by the Jewish immigration of those years. Even more ironic though is the thought that this very Balfour's name now adorns a major Avenue in Jerusalem, commemorating the Balfour Declaration on the Jews' own homeland.

Mr. Herbert Samuel made a pithy objection to the Bill, which could have been echoed in every immigration debate since:

This Bill is too small to satisfy the expectations it has aroused, and is much too large for justice.

But the restrictionists were undeterred. Two months later, in the Lords, Lord Belper declaimed:

A wholesale immigration from the eastern part of Europe has been going on for some time, and is taking place now. Many of these immigrants are quite destitute, and without any trade by which they can earn a living. They are of a low type of civilisation, and they lower the standard of living among our own working class . . . This country is rapidly becoming the sink of the most undesirable class of aliens on the Continent.

In vain the protestations in the Commons that the immigrants were actually stimulating British employment in the trades they had brought with them, notably tailoring and cabinet-making. The restrictionists would listen to no *type* of argument but their own: they insisted that the immigrants were an economic liability in the face of evidence that they were not, and so no rational debate on economic issues was ever possible for their own sake: economic arguments became mere ammunition on both sides in what was essentially a debate about the desirability or undesirability of Jews.

The next Parliamentary debate, in 1914, was not about Jews but about Germans. It was introduced in such a hurry that there were not even printed copies of the Bill available to the House when it was debated, and its three readings in the Commons occupy only two pages of Hansard (5th August 1914: the day after war was declared). It introduced massive new executive powers for the Home Secretary; when Sir William Byles protested that such powers were

dangerous, he was told to sit down. The next Aliens Restriction Act, after the end of fighting, was debated at sufficient length for the virulence of anti-German feeling to find full expression. The Home Secretary, Mr. Shortt, maintained:

Where it is a choice between our own safety and the safety of our people and the infliction of hardship upon an alien, then that hardship becomes necessary and ceases to be unjust.

Clause 2 of the Bill proposed powers to decide on the nationality of an alien which opened the way to repatriation. Sir Donald Maclean objected:

What does Parliament really propose to do? Are we going to send these aliens back to Germany or Austria? Just think what it means. Their roots are deep in this country and their children are here going to our primary schools. A very large number of them have married British-born wives, and there was evidence before us that the domestic relations between the technical enemy alien and the British-born wives and children were of quite a happy description, and those wives and children will follow the fathers if you repatriate them. We want to keep all these young British citizens here.

An Hon. Member *Technical British citizens!*

Sir Donald *Is it suggested that it is all in our interest to export this kind of national asset? We want to keep them here. These people are safe and they ought to be kept here.*

Hon. Members *No!*

Sir Donald *Is this what it all amounts to? Is it seriously suggested that for the sake of what I hope is a passing passion these people are to be shipped away like rats or vermin when they are British citizens and British assets? Their children are anyhow.*

Mr. Horatio Bottomley *It seems to me that the Rt. Hon. gentleman with all his experience has not learned from the experience of the War that the existence of an enormous alien colony in this country, ever increasing and mainly in percentage German or Austrian, was one of the contributory causes of the war. We do not want . . . to indulge in copy-book maxims about the rights of refugees. We have been the dumping-ground for the refugees of the world for too long.*

Between the two strongly-opposed points of view here represented, the Labour M.P. Ben Tillett introduced an interesting new style which was also to be important in later debates. He was obviously struggling to have things both ways. His beliefs, and some of his instincts, impelled him to reject the anti-foreigner hysteria that characterised most of the debate: he shrank from being associated with extreme Tories, but the demagogic orations of Bottomley and Pemberton Billing struck in him the resentful echoes they were meant to sound in all their hearers:

I want our country to be a really free country, open to honest men of all nationalities . . . On the other hand there are countries and persons outside our

own who availed themselves of our generosity and then took advantage of it . . . The richest men in Bradford at the present moment are Germans . . . I have worked myself as a bootmaker and our trade was taken from us by a number of gentlemen from foreign parts, who often had no bed to lie on, and they used to lie head-to-toe on the floor of the house . . . I want honest British labour protected.

This ambivalence left the way open to Billing to say:

The late Lord Chancellor quite recently stated that there were 20,000 aliens waiting in Holland ready to swarm into England directly the opportunity presented itself, and not only to swarm but to spawn in this country and produce all those little alien children whom the Leader of one-tenth part of the Opposition tells us we must protect and give an asylum . . . There are 200,000 aliens in this country . . . If we could get rid of those 200,000 aliens probably we might relieve very considerably the housing difficulty in this country . . . Why not badge these aliens so that at least people may say, 'This fellow is a German; I will have nothing to do with him.'

There was a good deal more from other members in similar vein before Colonel Wedgwood rose to speak:

I have never been so ashamed of the House of Commons as I have been today. I have some regard for the traditions of my country. We have never seen such a unanimous spirit of persecution since the time of the Popish plot in 1678. It is a case of people who are strong coming together to persecute the weak. I would observe that nearly everyone who has spoken has not fought in the War, but have been anxious to show their patriotism by denouncing the enemy alien. Why cannot we follow the policy of our ancestors of assimilating this foreign element and teaching it that England is something worth living for, something worth fighting for, something worth loving, instead of persecuting them and making their lives a hell, as Hon. and Rt. Hon. Gentlemen insist on doing.

This drove the restrictionists to even more crude expressions of hate for aliens. Perhaps the most striking was Mr. Stanton's:

Perhaps also in the case of a British woman who married a Hun in this country but who, fortunately, has become a widow, that woman and her English children might be allowed to stay here. But the others should not. It would be a stain upon our British stock. We do not want German blood any more in this country.

The Under-Secretary at the Home Office, urging the necessity of the Bill, did not descend to rejoicing that a woman had been widowed. He managed (again prophetically) to sound very liberal and middle-of-the-road in supporting the Bill: aliens were decreasing, not increasing, and:

The immigration of aliens has practically ceased under the present law . . . The

Bill is urgently needed. We want . . . to establish a permanent Department of the Home Office to deal with the alien question.

In other words, immigration was being kept very well under control, but at the same time new measures and machinery for control were needed Lt.-Col. Thorne objected that further control:

will give encouragement to stronger legislation than you have at present . . . If you think by clearing out a very large number of foreign workmen you are going to make economic conditions any better than they are now, you are making a huge mistake.

The debate on new control machinery proceeded, and Mr. Rothschild tried to get some provision included for appeal against the Home Secretary's decision to a Board or a court. A story was told of a Polish tailor from Hull who had left the country temporarily, as he supposed, and had then been refused re-entry; his wife and child were in Hull but he was not allowed to rejoin them. The Lord Mayor of Hull and other leading citizens had protested on his behalf, and testified to his bona fides, but the Home Office had still said no. But Mr. Rothschild's attempt, supported by Mr. Kenworthy and Colonel Wedgwood, failed, and the executive powers of the Home Office over admission of aliens were left untouched.

From 1919, alien immigration was regulated under the new Act, by Orders in Council until 1973. The next major debate in Parliament on immigration was in 1961, when Mr. R. A. Butler introduced the Commonwealth Immigrants Bill. By then, the machinery for immigration control set up in the atmosphere of the 1905, 1914 and 1919 debates had been operating for over fifty years. Its structure had been decided and its tone set in the kind of political exchange quoted from above. Its job, from the start, had been to keep people out – Jews, Germans, Bolshevists, undesirable aliens of all kinds.

The presumption of all immigration control, whether expressed in statute, or in Orders in Council, or in the machinery and detail of administration, was that its essential purpose was exclusion of the unwanted. At no point in this century has immigration control had any room for the encouragement of the wanted; at no point has it admitted any use for the principle that freedom of movement for individuals is a good. When the 1977 Home Office memorandum to the Select Committee referred to 'particular pressures' it was probably referring to pressure of people from outside to come in, but it would be truer to say that the pressures which have brought about our immigration laws have always been from politicians within the country. It is their pressure which has left such a deep exclusionist imprint on our law and its administration, and on the style of debate.

The Home Office memorandum continues: 'The United Kingdom has not, historically, been a country seeking immigrants from abroad'. There have in fact been stages in our history at which we have actively encouraged immigration, as

with Protestant refugees in the early eighteenth century, and many occasions when we have accepted, even if not deliberately sought, immigration on a considerable scale. But we have certainly never thought of ourselves as a country of immigrants; on the contrary, for the last two centuries our image of ourselves has rather been that of a country of emigrants. Until about the end of the Second World War, we had a picture of ourselves as a country which sent out its sons far and wide to colonise, administer, explore and trade, a people who had settled in the four corners of the earth. This image had meany features. Naval supremacy in those years was not only a strategic objective but an important part of the British sense of identity; the special affection for the Navy, rather than the Army, which prompted Kings to appear in naval uniform on many public occasions, was associated with the idea that British people could and would go anywhere. Britain was not an island fortress but an island port, and her very capital was an opening to the sea.

This tradition seems to have been utterly extinguished by the ending of Empire. Nostalgia for Britain's days of greatness, so obvious in dozens of recent television programmes, is never nostalgia for this seafaring expansiveness. There is no yearning for being part of a wider world. Plays and films have concentrated instead on the Army, and especially on the Army in a small, tight corner like Colditz. The image has changed from the open port to the fortress under siege. An immigrant of any kind can now be painted on to the canvas only as a prowling enemy outsider outside the island walls. In popular belief, we used to emigrate everywhere ourselves, but now we are forced to stay at home and other people are trying to get in. This is why the image of the 'overcrowded little island' is so powerful when politicians use it; nobody stops to wonder how many people you have to have here to be overcrowded or even to wonder exactly how many people *are* here altogether. Such factual questions are irrelevant. What matters is the image of the surrounding walls, with outsiders trying to scale them.

In fact, from the beginning of the century up to the present day, there has all the time been a continuous and considerable flow of migration both into and out of the country. Despite the sound and fury of the 1919 debate on aliens, despite the suffering of many individuals like the Polish tailor from Hull caught in the hostile machinery of control, an average of 10,000 aliens a year were issued with work-permits between 1921 and 1940. Many of the 230,500 who came brought dependants; so that about half a million aliens were admitted between the wars. In addition, there was a net inflow from Ireland, fluctuating between 5,000 and 30,000 a year, and in the early 1930s many British people who had emigrated to white Commonwealth countries returned here because of unemployment in the Dominions. In the 1930s there was actually, as a result, net immigration for a time. However, during the same period, people were leaving too, and during the inter-war years we lost population through migration taken as a whole. The same process simply continued after the war. In most years since 1945 more people have left the country than have entered it. We have, as before the war, had

both immigration and emigration, steadily producing a net loss of people. (The increase in population after the war was the result of a rising birthrate and a longer life-expectancy.) What has characterised the country has not been a one-way movement outward at one time, and a one-way movement inward at the other, as is generally believed, but a continuous two-way movement of people throughout living memory, and before.

How then are the Parliamentary debates of 1905 and 1919 related to the realities of immigration in the first half of the century? Their tone would lead one to believe that practically no aliens would have been able to come in, yet alien immigration in fact continued and included many Jews and Germans in the 1930s.

The measures to restrict aliens had three very important results. First, they introduced a machinery of control that greatly increased the executive powers of the Home Office and reduced the opportunity of aliens, in any matter provided for by the Aliens Acts and Orders, to have recourse to a court of law. In short, they were directed against civil liberties; they increased arbitrary government power. Second, they did not altogether end alien immigration, but they imposed many restrictions on aliens *after arrival,* for example on their taking part in industrial action in any firm where they had been employed for less than two years (1919 Aliens Restriction Act s.3 (2)). Third, they were an enormously important factor in the political exploitation of anti-Semitism, directed against settled residents as well as against potential immigrants outside, and of anti-foreign feeling against settled residents too from other countries: the Chinese in the East End of London, for example. Mosley at the Albert Hall in October 1934 attacked 'the big Jew', the sinister financier, but backed up this attack with his references to another kind of Jew: 'little people who can hardly speak English at all' and claimed that the Liberal government before the First World War had 'opened the floodgates and admitted the sweepings of foreign ghettoes to Great Britain'. They, he said, were not the real danger: the real danger was the big man. Why, then, did he bother to express his contempt for the 'little' immigrants of thirty years ago? Surely because an easy response from his audience was to be expected to such a reference: a whole set of prejudices lay ready for him to play on – prejudices not created by his British Union of Fascists but by politicians in respectable parties long before. What the Fascist movement could do was to use propaganda that others had prepared for it – Mosley's remarks in 1934 on this subject were not a whit less immoderate than dozens of speeches made by M.P.s in 1905 and 1919. And if Fascism included many new and un-British elements like the glorification of the State as a mystical body, and the admiration of power rather than of the rule of law, the easiest way to introduce these ideas was with reference to alien elements in the State. The need for unchecked executive powers to deal with them did not even have to be argued; they had already been established.

The very harsh régime imposed on aliens after 1919 was little noticed or objected to from any quarter. It was not until some of the measures were re-

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stated in the 1971 Immigration Act for application to all non-patrials that they received much notice. For example, the clause empowering the Home Secretary to remove from the country any non-patrial who had become an in-patient in a mental hospital looked like a shocking innovation, but in fact such a power over aliens had long been in existence. So powerful and effective were the laws against aliens, politically speaking, in quieting opposition to their assumptions and their effects, that even those who have strenuously opposed restrictions on Commonwealth immigration since 1961 have hardly given any attention to the rights and wrongs of the system of controlling aliens. Perhaps they have felt, not altogether consciously, that it might spoil their case for freedom of movement to widen it to aliens; perhaps they have really come to believe that one need not be concerned with the rights of people who had no historical British connections at all. Of course, since the administration of control since 1962 has often in fact favoured aliens above Commonwealth immigrants and even UK citizens, although the wording of the law has not, people working on behalf of the rights of immigrants from the Commonwealth have often had an understandable resentment of what they see as a reversal of priorities. Also, the inequality of treatment has had a blurring racial character, making entry easier in effect for white aliens as well as white Commonwealth citizens, within the regulations, and harder for black aliens as well as black Commonwealth. At all events, liberalisation of immigration control over aliens has never been an attractive cause since 1919, except in particular cases concerning refugees, such as those from the Continent in the 1930s, from Hungary in 1956 and Chile in 1973. No politician has seriously challenged the principle or the practice of restriction of aliens. There seems to have been a psychological block impeding any serious thought about the issue.

There is now a similar psychological block in the way of serious thought about immigration from the Commonwealth. Again, even those who have opposed the Commonwealth Immigrants Acts and the 1971 Act have by 1978 been driven to a point where all they feel able to ask for is some amendment to the latest, harshest restriction that will make it a little less harsh. The campaign is to restore a right of appeal to 'overstayers', or to improve the administration of entry clearance in the Indian sub-continent – not to challenge the whole structure of control. Such a challenge has come to seem politically so hopeless, so impossible of adoption by any political party in any conceivable circumstances, that the impetus behind opposition to our immigration control has faltered, weakened, and almost died away. It gives the impression therefore to people in general that it is fighting a holding action in a hopeless battle: Thermopylae, not Stalingrad. Such a position does not attract allies.

But anyone who can succeed in the appallingly difficult struggle, to free themselves from the psychological blockages of vision that our political history in this century has put in the way of looking at migration as a whole, will find that the intellectual and practical difficulties of working out an immigration policy are no greater than those faced by other countries, nor are they even so

very different from those of other countries. We have a popular image – again a false one – of some nations as countries of immigration and others as countries of emigration. The Home Office memorandum to the Select Committee indeed refers to this: 'Unlike countries such as the United States and Canada whose economic development has depended on large scale immigration, the United Kingdom has not, historically, been a country seeking immigrants from abroad.' As has been pointed our earlier in this report, the United States, Canada, Australia and New Zealand – all nations we think of as countries of immigration – have had a steady outflow as well as inflow of people over a long period: at the same time Australia has had throughout this century until very recently an almost total ban on Asian immigration, and the United States has had a rigorous system of control since the 1920s. Like the United Kingdom, they have always experienced two-way movement; like us, they have had restrictions to exclude certain immigrants on national or racial grounds. There has been no question of attracting immigrants indiscriminately. Nor have any of them wanted to draw in *large* numbers, even of the national groups they preferred, in very recent years. Our image of these countries is, in some ways, at least 50 years out of date; they no longer allot priority to the importance of immigration in economic development; all of them operate a detailed system of *selection* of immigrants, under the headings of family reunion, work-permits, refugees and so on, applied to the whole outside world.

It is just such a policy of selection which we do not have. We have never even talked about it. The 1971 Immigration Act was supposed to be a new kind of all-embracing statute, covering Commonwealth and alien immigration together, but it was not based on any all-embracing policy. It was a rag-bag of old Aliens Orders and clauses from Aliens Acts and of concepts from Commonwealth Immigration Acts, to which was added the confusing new notion of patriality, or right of abode, which threw our nationality law into disarray. The 1971 Act was, like its predecessors, about exclusion, not about immigration. Its provisions on work-permits were taken over from the former rules for aliens, and were not considered anew as part of national economic policy but as a familiar part of the machinery of efficient exclusion. Once again, no attempt was made to produce a law which would be 'a positive means of achieving pre-conceived social or economic aims'.

One reason why this was so was that the psychological blocks, referred to earlier, made it difficult for anyone in politics to think about migration in such terms, to think of it as anything but a way of keeping unwanted people out. But another reason was present too. There were no pre-conceived social or economic aims in existence, clearly formulated enough for the long term for anyone to fit an immigration policy to them. In 1945 (when, incidentally, we were all a great deal worse off than we are now) political debate centred round clear objectives for the distant future. Immediate policies were formulated with that future in mind, as a means of working towards the goals envisaged for it. But for some time now, political debate in the United Kindom has been concerned entirely

with short-term objectives, all of which are defined as modifications of an unsatisfactory present. There is unemployment, so the objective is somewhat lower unemployment. There is inflation; we aim at less inflation. This kind of political debate is acutely depressing, because it focusses attention all the time on what is wrong. A debate that looks forward to the future emphasises instead the happier prospects one is aiming for. It enables one to look at the present with some sense of perspective in the light of the beacon ahead. Short-term problems can be weighed against long-term benefits.

As soon as we look at immigration policy in this light, attempting to focus on long-term effects, and asking ourselves how it can be related to our aims for the future of our society, an astonishing fact comes into view. Nobody in British politics has seriously considered for at least thirteen years the possible *benefits* of any kind of immigration to our society. Immigration has not been seen as anything but a problem. The economic advantages it brings have not been denied; they have simply been ignored. Its character has never been analysed, except in racial terms; its effect on population has never been considered, except in racial terms. The fact that immigration into this country has been on a far smaller scale than immigration into any other western European country (proportionately to population) since the war is unknown. Discussion of the issue has moved right away from reality.

When we look at the reality, that is, at immigration as a whole and over a period of time, in the context of national policy aims, we embark therefore on a completely unfamiliar discussion. What follows is an attempt to open such a discussion. It asks the question: if we were to repeal the 1971 Immigration Act, what should we put in its place?

LEGAL LIMITATIONS AND POLITICAL TIES

1. The European Communities

There are no legal limitations in our domestic law, except where we are bound by Treaty, or by any part of United Kingdom law that gives expression to an international agreement to which we are party, on our freedom to legislate on immigration. By far the most important limitation is the Treaty of Rome. We cannot pass any legislation repugnant to the Treaty itself or to any of the measures of European Community law which, under the Treaty, we are bound by. A major part of Community law is concerned with the free movement of workers between member countries. So we have to take, as given, European Community internal policy.

We are now part of a common labour market with France, West Germany, Italy, the Netherlands, Luxembourg, Denmark, Belguim, and Ireland. Spain and Greece may enter this common labour market soon too; possibly Turkey and Portugal will do so. So far, our membership of the European Communities has made very little impact on immigration into the United Kingdom, because unemployment here has been high since we joined, and because West Germany is

much more attractive to migrants, as it offers better money. But, though poorer than Germany, we are richer than Spain, Portugal and Greece; if they join the Market, we can expect migrant workers from there to come for the jobs our own workforce finds unappealing. And if we move out of the present depression and have more jobs available, we may draw in migrant workers from other Market countries too. The point is that we have no independent control over migration within the European Communities, and cannot assert it. We ended the old laissez-faire migratory system within the Commonwealth in 1962, as there was nothing to stop us, but we cannot pass an EEC Immigrants Act to keep people out if we feel like it. A large part of our immigration policy is decided now by the European Communities as a whole and cannot be unilaterally changed by the United Kingdom.

The problem of devising a new immigration policy, then, is concerned with how to select immigrants from outside the European Communities. Obviously the fact of EEC membership must modify the way we look at the problem; we have to devise, not a system of migratory relationships between the United Kingdom and the rest of the world, but a system which regulates migration from outside the EEC while taking account of the likely movements within the EEC. It would be pointless, for example, to have a new immigration law setting a ceiling for the total number of entrants in a year, since we cannot control the numbers entering from other EEC countries; market forces control them under EEC law. Nor could we decide to protect a particular section of our labour market from all outside competition – we could only protect it from non-EEC competition.

2. The Commonwealth

There is no legal limitation, like the Treaty of Rome, on our legislating on immigration from the Commonwealth. There are however important political and emotional ties with the rest of the Commonwealth. Should a new immigration law treat Commonwealth countries differently from foreign ones or not?

At present, our immigration law divides people in the Commonwealth into two groups, not according to what citizenship they have, but according to whether they are patrial or non-patrial. Our Commonwealth immigration policy is in two halves; the very liberal half, towards patrials and white non-patrial 'working holidaymakers', and the very restrictive half towards most non-patrials, including some of our own citizens. We do not have a policy towards the Commonwealth as such, only a racial policy. This is, of course, completely against the spirit of the Commonwealth and irrelevant to its structure. If we were to have a Commonwealth immigration policy properly speaking, it would have to apply equally to citizens of all other Commonwealth countries regardless of race.

It is worth pointing out, since nobody has yet pointed it out, that this would not necessarily mean returning to complete laissez-faire between the United Kingdom and other Commonwealth countries. It would be perfectly possible to

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have a system of immigration control directed towards all Commonwealth countries on an equal basis, incorporating more liberal provisions than towards non-EEC foreign countries. There are various ways in which this could be done.

(i) We could scrap the present system entirely, and then begin by saying that all our own citizens could enter freely, regardless of racial origin, if they were applying from a Commonwealth country in which they did not have citizenship too. This would restore right of entry to our own citizens who were (contrary to international law) deprived of the right to enter their own country in 1968.

(ii) All citizens of other Commonwealth countries could apply for work-permits, which could be issued for a specific vacancy or for a type of work for which there was strong demand in the UK.

(iii) The five-year 'working holiday' could be extended in practice to any Commonwealth citizen; at present it is effectively limited to white ones, mostly Australians.

(iv) A work exchange scheme might be operated with other Commonwealth countries, enabling UK citizens and other-country citizens to work temporarily in each others' countries without permanent commitment and without any alteration to employment figures in either place. Such a scheme would meet the needs of many individuals who want to travel and gain a variety of experience, and would strengthen the Commonwealth bond which so many events have weakened in recent years.

(v) The principle of family reunion should be observed at least as much for Commonwealth-country citizens as for EEC citizens: Commonwealth citizens lawfully resident in the UK should have the right to be joined by spouses, children under 21, elderly dependent parents, and other dependent relatives in certain circumstances where common sense and compassion suggested. The administration of entry clearance should be radically reformed to make it quicker and simpler than now, and the same procedures should be followed for all family applicants, regardless of racial origin. Fiancés and fiancées should be admitted for marriage on the same terms as each other.

There are other possibilities that could be considered. The essential feature of a Commonwealth immigration policy, whatever its detailed provisions, would be that it would treat all Commonwealth citizens equally regardless of race: not only a new law, but a new administrative machinery would be needed to implement it. This would mark a dramatic change of practice from the present system. Several million patrials would lose the absolute right of entry they now have. The total number eligible to come from the Commonwealth would therefore fall. The regulation of new admissions, if placed partly on a family reunion basis and partly on a work-permit and work-exchange basis, would fall into line with the practice of other Commonwealth countries like Canada and Australia. At the same time, a unified system for the

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Commonwealth as a whole would be a highly significant political move, both in acknowledging the continuing existence of a Commonwealth link and in stating a British commitment to racial equality.

3. Dependent territories

Discussion of immigration from the Commonwealth since 1962 has, because of its racial character, obscured many important issues. One of these is the difference between citizens of Colonial territories and citizens of independent Commonwealth countries. The 1962 Commonwealth Immigrants Act lumped together the two groups, and no attempt has been made since then to discuss whether the United Kingdom owes more consideration to the inhabitants of dependent territories for which it is internationally responsible than to citizens of other States within the Commonwealth.

This is particularly odd because we have had, in law, since 1948 a *united citizenship* of the United Kingdom and Colonies. The 1948 British Nationality Act makes no distinction between its holders from whatever territory, and it might reasonably have been expected that any measure of immigration control would take for granted the right of persons holding this citizenship to move freely between all the territories on which it was based. Actually, the citizenship has always been, in this respect, a sham. The dependent territories all had their own immigration laws even before 1948, and continued to have them after then. Under these laws, citizens of the United Kingdom itself and citizens of other dependent territories are subject to control under each dependency's law. These Colonial immigration laws vary considerably among themselves. Hong Kong's is comparatively liberal, while at the other extreme the laws of Gibraltar and Bermuda are very strict indeed, and actually subject a number of people born in their territories to immigration control there, even though anyone born in either place has citizenship of the United Kingdom and Colonies under the 1948 British Nationality Act. The United Kingdom's 1962 Commonwealth Immigrants Act did not breach the principle of a united citizenship for the first time; it merely brought the United Kingdom into line with the Colonies in imposing control between the various territories which legally formed a single unit for nationality purposes.

What will happen to citizenship in the Colonies is a matter to be decided in a new British nationality law. But whatever change is made when such legislation is passed, the question still remains: so long as certain territories are dependent on us, should we give their inhabitants some kind of preferential treatment in our immigration policy?

It could be argued that we should do so on moral grounds; that the rights we have over dependent territories give rise to certain obligations on our part. The relationship is in fact, however, a curious one: for some time, the British Government has behaved towards Colonial governments in many respects as though they were *de facto* independent. Westminster has been most unwilling to intervene in any Colonial government's affairs, even over the controversial

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hangings in Bermuda in 1977, for example. The sense of direct responsibility on the British Government's part towards the citizens of Colonies has thus been weakened.

The whole question deserves a serious consideration which it has not yet had. For immigration policy purposes, dependent territories fall into three categories: Gibraltar, Hong Kong, and the rest. Gibraltar is peculiar in that its inhabitants have had right of entry to the United Kingdom since 1973 under European Community law. Gibraltar, being a European territory for which we were internationally responsible, became part of the EEC when the United Kingdom did. We have therefore no independent control over immigration from there. Hong Kong deserves a category of its own because it is by far the largest of the remaining dependencies. It has a population of about 4½ million, of whom roughly 2.6 million are citizens of the United Kingdom and Colonies. The other dependencies are very small indeed, and have a total population between them of only about half a million.

A new immigration policy might put the dependent territories into the same category as independent Commonwealth countries, or might include some special preferential provision, such as assisted places for Colonial students in UK higher education, or especially favourable conditions for work-permits. Discussions with representatives of various opinions in the Colonies themselves would help to suggest useful practical possibilities.

4. The world outside the EEC and the Commonwealth

A unified system of immigration control on a non-racial basis has to be based on some principle of selection. What should that principle be, in the United Kingdom's case? The issues to be considered first are described below.

There are some legal limitations on our policy in general. We are bound by the UN Convention on the Status of Refugees to admit any individual seeking entry who falls within the Convention definition of a refugee (see Chapter 4 above). At present, the definition is incorporated into our Immigration Rules and not into the 1971 Immigration Act. We are also bound by the provisions of the European Convention on Human Rights, which says that 'Everyone has the right to respect for his private and family life' (Article 8): this acknowledges the principle of family reunion which is applied in many States' immigration laws.

A NEW POLICY FOR SELECTION: POSSIBILITIES AND PROBLEMS

1. Laissez-faire

The argument that the United Kingdom should have a policy permitting complete freedom of entry will seem to many people not worth considering for a moment – politically unrealistic, impractical, wrong, absurd etc. There are two reasons why it deserves examination. One is that it occupies an important political place in existing discussion; it is the only counter-proposal that has been made since 1961 to whatever immigration law any British Government has

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proposed. Usually it has been demanded only for the Commonwealth; occasionally the principle of free entry for all has been defended, by Left groups rather than by anti-racist organisations. The second is that it has advantages which have never been acknowledged by the main political parties. These are: it is easy; it is cheap; is is humane; it avoids all the thorny problems that arise in any form of selection, and it offends nobody. Perhaps the most serious practical argument against it is that, if it were to be introduced by a British government, nobody would believe it could last for long, and the policy would therefore stimulate an artificially large flow of immigration in a very short time. Another argument, related to the first, is that laissez-faire cannot work well within a generally restrictive system; all countries control immigration, and any country which stopped doing so would become a destination for people who really wanted to go somewhere else.

The demand for free entry from the Commonwealth only is a political and moral one. It is put by those who feel strongly that the United Kingdom has broken faith, ignoring its obligations to the countries which, in the days of Empire, provided a vast amount of their wealth and moreover sent men to die in two world wars, on this country's behalf. A debt is still owed. Another argument is that the racism in our existing immigration law can only be purged by complete repeal of every immigration law so far that has been imbued with racism. Underlying these arguments is a strong attachment to the Commonwealth ideal: the replacement of imperial domination by an equal, multi-racial partnership and a special link between countries which share certain traditions in law, language and culture as well as personal connections.

Demand for free entry from the world at large rests on different arguments: the irrelevance of national boundaries to individuals' real concerns and wishes; the right of the worker to move where he can best earn his living (a right corresponding to that of the multi-national company, which can seek labour where it wishes); the claim of individual liberty of choice. These are not crankish arguments; the ideas they embody were taken for granted by most British people, including politicians, not so very long ago; they represent the wish to return to a very old and long-standing tradition rather than to do something startlingly new. Indeed, it often seems inconsistent of politicians to object as violently as they habitually do to the totalitarian nature of countries which restrict emigration, while urging on their own part ever stronger restrictions on immigration. How does one distinguish which policy is totalitarian? No nineteenth-century liberal would have been in any doubt at all that both kinds of control were equally objectionable.

The argument that laissez-faire is cheap has not had much attention, possibly because the total cost of immigration control has not been calculated. The amount of Civil Service and police time it takes, the mountains of paper it consumes, and the office space it requires must cost the taxpayer a very substantial sum indeed.

If laissez-faire is rejected, the problem of how to select immigrants must be

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faced. If the selection-principle is not to be a racial one, what should it be? Should the basis be population policy, economic policy, or what? Possible bases are described below.

2. Population policy

Since this country has been consistently losing people through migration, since the birthrate in recent years has been falling steeply, and since it is an observed fact in all countries that some immigrants who come for permanent settlement always re-emigrate, we can assume that the gross numbers of immigrants entering for settlement could be increased somewhat above present levels without adding to our total population numbers any permanent increase.

Putting it another way, if we maintain the present very low level of immigration, or reduce it, over the next twenty years, and if emigration continues at the same average level as it has done, while the birthrate remains very low, our population is going to decrease steadily and perhaps (if the birthrate does not rise again significantly) rapidly.

Forecasting population trends is always a hit-and-miss affair. The fall in births, however, is unlikely to be temporary only. It has been due to the widespread use of the contraceptive pill, to change in the law on abortion, and to the economic difficulties of inflation and housing shortage which have recently completely altered the assumptions of young couples about having a family. A mortgage requires two lots of earnings for all but the highest-paid; a wife cannot now expect to stay at home and be supported within a year or two of marriage. The tax system bears heavily on people with children. So long as these circumstances remain, we are unlikely to see a rise in birth-rate. (There has recently been a very slight rise, attributed to births to couples who have delayed having children for economic reasons.)

Fear of overpopulation in the world at large has been much publicised in the last two decades, and some may suppose that a falling population is a good thing. However, an important factor is population age. With a falling birthrate and low immigration, and with people emigrating, which they usually do when young or in early middle-age, the present decline in numbers will be characterised by a big shift in the average age of the population; there will be a far higher proportion of elderly people in the total. They have to be supported by people of working age, and the result would inevitably be a general lowering of the standard of living.

Immigrants generally enter a country between the ages of 20 and 40. They often bring with them, or produce after arrival, dependent children. Their admission therefore has the effect of increasing for a considerable period the proportion of the population that is at work; they are at a fairly early stage of working life themselves and their children reach working age not very long, on average, after their arrival. Immigration lowers the average age of a population which has a high proportion of elderly people and a low native birthrate.

In the long term, of course, immigrants become old themselves and need

support. A policy of continuing migration at a steady level will keep the average age down, however. This was one of the considerations that lay behind the Australian and Canadian Green Papers' recommendations for a steady flow of immigration.

The question of what is the optimum population size for any country is, of course, always controversial. But it is always pointless to think in terms of density per square mile. The population a country can best support is the one which can make best use of its economic resources, whatever these are. A very small territory with poor soil and no minerals can comfortably support a very dense population indeed if it is engaged in profitable manufacture, for export, of imported raw materials. A much larger area of rich agricultural land may be able to support only a small fraction of the population the small territory has, if it relies on the income from its agriculture. There are other factors besides the economic one, though. Hong Kong supports an extraordinarily dense population in a tiny area but at great social cost; the living conditions of many inhabitants are appalling. On the other hand, a very sparsely populated country can suffer from lack of amenities in its scattered settlements; Canada finds it difficult, despite unemployment, to fill jobs in remote areas where a severe climate, lack of neighbours, and distance from shopping and recreational facilities make life unattractive. One can calculate optimum population only by taking into account a great many different factors and by exercising one's judgment about which are the most important ones. There will always be disagreement, for example, between those who want unspoiled moorland and bird sanctuaries and those who want higher per capita income.

But the essential point, in any discussion of optimum population for the United Kingdom, is that it is both inaccurate and stultifying to think of Britain as 'an overcrowded little island', and leave it at that. Overcrowding is an emotive, not a precise, term; its use confuses any attempt at rational discussion. Anyone using Oxford Circus tube station at the rush-hour feels justified in claiming that the country is overcrowded; if one put the same person down in the Highlands of Scotland and left him to walk in a straight line for a few days, he would on just the same sort of grounds conclude that the nation was seriously underpopulated. But actually neither observation would be objectively worth anything as an estimate of how big the population was, or how big it ought to be.

Internal movement within a country is, in many nations now, much more important a factor in creating what are loosely called environmental problems than the movement of migrants. The shift from countryside to city, or from small towns to the capital, often brings serious difficulties in housing and the provision of services. London is, on the other hand, facing difficulties at the moment because of declining population. (So is New York.)

There are no easy answers to be found to population problems in bandying crude numbers about. Age, distribution and economic activity are the important features of population; any immigration policy based on population needs has to

consider these. There can be little doubt that, strictly from the point of view of a population policy, an increased but steady flow of immigration would be beneficial to the United Kingdom, by increasing the proportionate size of its workforce and lowering the average age.

Economic policy

In the 1960s some British economists, notably E. F. Mishan, were arguing that immigration was harmful to the economy. The National Institute of Social and Economic Research therefore made a survey; they did not investigate all immigration, since the way in which statistics were kept made in difficult to do so, but they studied the costs of Commonwealth immigration. They concluded that, far from costing the country anything, this immigration was beneficial to the economy. Their thesis convinced the government at the time; but the very success of the Institute's work meant, in effect, that economic considerations were pushed to one side when immigration control was discussed. The government reasoning was: if the economic effects are beneficial, we don't have to worry about them. Instead, political discussion concentrated on the 'social' effects of immigration: that is, on race, The White Paper of August 1965 exhibits the inconsistency between the government's lines of approach to the problem: Parts I and II were all about the great benefits which immigration brought to the country, while Part III was about cutting immigration down, for the sake of benefits that were never spelt out.

Once it had been established that economic arguments could not be used convincingly in favour of restricting immigration, economic arguments were simply dropped. Since 1965 there has been no debate on immigration on economic terms, except at the level of the popular sentiment, 'They come here and take our jobs'. Actually, immigrants do not come and take jobs away from British people, and every government since 1965 has known this fact perfectly well, but no attempt has been made by political leaders to contradict a belief which feeds popular resentment without helping a single individual find employment.

It has indeed often been said that the Commonwealth and foreign immigrants who came in the 1950s and early 1960s arrived at a time of severe labour shortage, often in response to advertisements or direct recruitment in their countries of origin, so as to fill jobs which there were not enough British people to fill. It is widely assumed, though, that as soon as there was unemployment, immigration must have made matters worse; it is also widely assumed – quite incorrectly – that a lot of immigrant workers are still coming in, and aggravating the problem.

Actually, since the late 1960s employers in Britain have found it very difficult, often impossible, to recruit workers whom they needed from overseas, even when there has been nobody available in this country to fill vacancies. For over ten years, the immigration control system has not allowed an employer to take a

worker from outside the country unless he can prove that there is nobody in this country available to fill the particular vacancy in question. It has therefore been impossible for any immigrant worker coming in to take away the chance of a job from a British worker. Despite unemployment in the 1970s, there is in many industries a serious shortage of skilled workers. Unemployment is even aggravated by this lack; if more skilled workers were easily available to employers it would be possible to expand certain industries, and to prevent others from closing down altogether. Employment opportunities for the resident population would then be improved. An immigration policy that was based chiefly on economic needs would be quite different from the present system; it would allow much more flexibility in recruiting immigrant labour, particularly for skilled jobs and also for unpopular jobs. The Department of Employment memorandum to the Select Committee on Race Relations and Immigration (7 July 1977) pointed out:

If immigrant labour had not been available for textiles or clothing, both of which are highly labour intensive and offer relatively low earnings, they might have found it even harder to withstand international competition with consequent adverse effects on the trade balance in textile and clothing products. Attention is also drawn to the marked dependence on immigrant labour in London in certain essential public services and in hotels and catering.

Our tourist trade depends heavily on an adequate supply of hotel and catering workers, and public service workers, particularly in London, but for some time employers have been hampered by a quota on unskilled workers in hotel, catering, domestic and nursing auxiliary jobs; there is an annual limit of 3,000 for these categories altogether, regardless of employers' needs. The Department had evidence of some recent improvement in recruiting figures for workers in these categories from the home labour force, but employers still face great problems here.

It is odd, if governments are really concerned to allay public fears about the effects of immigration, that they have never tried to get these facts across. In the climate of opinion we now have, as a result, it has become pretty well impossible to state a much more general argument in favour of immigration, which is that, in so far as immigration stimulates an economy and helps it to grow, immigration can actually reduce rather than add to unemployment. Immigrants are consumers as well as workers: they represent demand as well as supply, and (like any other addition to the population) enlarge the domestic market for goods and services. They are quite the opposite, in fact, of an economic burden. Canada, with much higher unemployment than ours, has recognised this fact in its new Immigration Act, which welcomes immigrants who can show that they are likely to become successfully established in Canada.

If we were to devise a new immigration policy that was not on a racial basis, should it be on an economic basis? Should the needs of our economy be the main

consideration? It could be argued that we have taken an important step already in this direction by joining the European Communities. In joining, we accepted the principle of free movement of labour between member countries. So far, the move has not helped us much to recruit skilled workers whom we need, because the United Kingdom is not very attractive to migrants from other parts of the EEC. (Even some of the Irish are now migrating to other European countries, despite the very long tradition of migrating to work here, and the language problem elsewhere.) If economic conditions in this country improve in comparison with other EEC countries, we may attract more migrant workers to come spontaneously from inside the Market. But if not, we may need to recruit workers elsewhere. According to the Department of Employment memorandum to the Select Committee:

In 1971, immigrants accounted for about 6% of all those economically active, with a little over a third of economically active immigrants having been born in the New Commonwealth. But these proportions are growing. The whole of the increase between 1961 and 1971 in the number of employed people in Britain was attributable to the growth in the number of overseas born workers.

In other words, the number of people in the native British workforce remained static for ten years from 1961 to 1971. Without immigration – two-thirds of it foreign or white Commonwealth, incidentally – we should have been able to produce far less even than we did in that decade. (The memorandum says that 47% of New Commonwealth immigrants were working in manufacturing industry, as compared with 33% of all employed persons. Unfortunately no figure is given for the proportion of all kinds of immigrants in manufacturing industry. This is a characteristic example of the difficulty one faces in trying to assess the total impact of immigration on the economy: racial classifications wander in and out of the statistics all the time.)

If economic need were to be either the main basis, or one of the bases, for a new immigration policy, it seems clear that the policy should be one of encouraging the immigration of those types of workers, from whatever source, who were most needed, and of liberalising the work-permit system so as to make conditions here more attractive in at least one respect. The present hidebound system for non-EEC workers, wherein a permit-holder must stay in the same job with the same employer for at least a year, must seek official permission to change his job even within the same firm, and must wait four years altogether before getting a right to permanent settlement, with his employer's recommendation being essential at every stage of the procedure, is much less appealing than the simpler systems, effectively giving right of residence after a year or two, in Norway and Sweden.

Refugees

There is no provision for the treatment of refugees in the United Kingdom's

domestic law, except for the inclusion in the Immigration Rules (issued under the 1971 Immigration Act) of a brief section saying:

A passenger who does not otherwise qualify for admission should not be sent away if the result would be his going to a country to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

When the UK acceded to the 1951 Convention and the 1967 Protocol on the Status of Refugees, the text of the documents was simply presented to Parliament by the Foreign Secretary. The practice of 'presenting' international agreements we have signed, rather than incorporating their texts into domestic legislation, has been followed in many cases. It results in the executive branch of government having power to implement the agreement concerned. Since such international instruments are not part of British law, their protection cannot be invoked by individuals before the courts or before tribunals: the executive power thus has complete discretion to operate the provisions of an international agreement as it sees fit.

Once a person has been recognised as a refugee under the Convention, he or she is entitled to some important rights: he has the right to remain permanently and may not be expelled save on grounds of national security or public order; he has a right to appeal against expulsion and to be allowed a reasonable period before expulsion in which he can seek admission elsewhere. He has a right to a Convention travel document, now universally accepted as a passport, so that he is free to come and go. In various ways, he is treated like a British national, for example, being charged the domestic rate and not the overseas rate for fees in higher education. People recognised as refugees are, therefore, in a much more favoured position than a work-permit holder, a student or a visitor under the 1971 Immigration Act: rightly so, since they have usually already experienced considerable suffering, and are always in real need of considerable help and support at first.

Not everyone popularly called a refugee is a refugee under the Convention and Protocol. The people expelled by General Amin from Uganda in 1972 were UK-and-Colonies citizens forcibly expelled from Uganda and not from their country of nationality, which was the UK. Technically, they were 'evacuees'. An individual who has fled from his own country owing to fear of persecution on some ground other than the ones mentioned in the Convention is likewise not a Convention Refugee, though in practice his position may be desperate as if he were. The UK has admitted a number of people and voluntary organisations here have helped them, often with funds provided by Government sources, who do not come under the Convention definition.

The main problem has been that a considerable number of people in recent years have been admitted temporarily only, and without any of the rights which

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refugees have under the Convention, even when they have actually been entitled to claim asylum. The practice has been to admit them under the Immigration Rules relating to students, visitors, dependants etc. whenever possible and only in the last resort, where the conditions could not be met, for asylum. This practice has been explicitly stated by the Home Office to be the norm: 'Our Immigration Rules follow the terms of the United Nations Convention, but on a 'last resort' basis, so that if someone has a good case to enter or remain in the United Kingdom on some other footing, the need for a claim to asylum and to refugee status does not arise.' This practice is certainly not in the spirit of the Convention, however, and has caused great distress and difficulty to many people given temporary entry instead of asylum. Such people can be, and have been, deported. This has happened with many Cypriots who fled from Cyprus in the late 60s, and were later deported by the Home Office.

A practical consideration here is that many refugees arriving at ports of entry are frightened about whether they will be admitted at all or not, and eager to clutch at any sort of admission without realising at the time the implications of it coming under Rules that do not relate to refugees in particular. If they have suffered political persecution, they will be nervous of answering officials' questions about themselves; if they have got out of their own country on forged documents, which in the nature of things they may have had to do, they will be understandably uncertain whether to admit the fact or to tell lies for fear of being refused. Besides, there are often language difficulties in the way of easy communication with an immigration officer.

Several other countries which signed the Convention have adopted a much more satisfactory method of applying it: Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Luxembourg and Switzerland have all incorporated the provisions of the Convention in their domestic law. All have set up a formal procedure for determining whether a person has refugee status or not.

A new UK Immigration Act could follow these numerous examples; it could incorporate at least the principal provisions of the Convention and so make it part of domestic law that could be applied in the courts. It could also establish a central unit responsible for deciding who was or was not a refugee, and at the same time ensure in the administrative provisions of the Act that every individual refused at a port of entry should be specifically informed of his right to apply to this body for recognition, and to ask the help of some voluntary organisation used to making representations in such cases. Such a person would have to be permitted to make his appeal *inside* the UK, for obvious reasons. Since the Convention requires that refusal should not be made without due process of law, there should be an appeal from the specialist body to a Court. Those recognised as refugees should be issued with certificates of recognition, which they could use in applying for a travel document, a national insurance card etc.

To incorporate the Convention in domestic law is a desirable end in itself, but to do so as part of a general Immigration Act would have several beneficial effects. It would help to remove the 'last resort' attitude from official thinking. It would alter the tone of the Act as a whole, putting the reception and welcome of refugees into the context of total reception from outside the country; possibly then the idea of welcome rather than restriction, as an aim of immigration policy, would be reinforced.

Family Reunion: The principle of family reunion has, up to now, occupied always a secondary place in our immigration law. Other countries often give it pride of place. Canada and Australia have long put particular emphasis on it, not only for humane reasons but for practical ones: immigrants settle down better when they have their families with them, and at the same time the relatives of existing residents make fewer demands than other new arrivals. The immigrants already in the country are there to help with information and advice, local know-how, housing in the first instance, possibly sometimes financial help in the first month or two. The residents thus save the government a lot of money and bother in acting as a sort of unpaid and unofficial advisory service to new arrivals. These considerations apply to quite distant relatives; so far as close relatives like wives, children up to at least 21, and elderly parents are concerned, most countries besides this one take for granted that *of course* they must be admitted. It would be unthinkable to stop them. Under EEC law, we are bound to admit such close relatives of EEC citizens resident here; under our own immigration law we are much more restrictive towards relatives from outside the EEC. The term 'dependant' has actually come to sound like a description of an undesirable burden rather than a member of a family. And the administration of our law has for many years now placed great difficulties, sometimes insuperable ones, in the way of people wanting, quite naturally, to live as united families in this country.

Surely the least that a new law could reasonably and humanely do would be to use the EEC criteria for admission of relatives for the relatives of all citizens and immigrants lawfully resident. There would still be cases where sense and compassion would suggest widening the definition: for example when a married couple here wanted to send for an orphaned nephew who had nobody to look after him overseas. The EEC rules would merely provide the minimum standard, and provision could be made for special consideration of distressed relatives outside the category. A single set of rules like this would be much easier to administer and clearer for everyone to understand, and would satisfy the standards of international law. Attitudes towards dependants could perhaps be changed eventually if we followed the example of other countries in making 'Family Reunion' one of the headings in our immigration law, and established it as an objective of policy. It would also be necessary to alter the administrative arrangements under which people at present are constantly refused entry as

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relatives on the ground that they are not really who they say they are. An absurd system has developed, under which applicants are asked for documentation which the Home Office knows perfectly well does not and cannot exist; they then are either refused for failing to produce the non-existent documents or, if they go to an agent to help them with some kind of documentation, they are refused because the papers they have got are incorrect or allegedly fraudulent. A simple change of attitude is all that is needed: the shift from assuming that all applicants are frauds to assuming that a man is unlikely to be sending for a wife and children (at very great expense) who are not his own. The foundation for a new attitude could be firmly laid if Family Reunion were established as a desirable objective of immigration policy in general.

A New Administrative Machinery

In the second chapter, it was pointed out that a country's immigration policy depends not only on its law and Rules but on the nature of the administration which puts the law and Rules into practice. This second factor has been of very great importance in UK policy from the beginning. Our current Immigration Rules state that, 'Immigration Officers will carry out their duties without regard to the race, colour or religion of people seeking to enter the United Kingdom', but this excellent principle has not been observed since 1962, and everybody involved in immigration control knows perfectly well that it has not. Indeed, any immigration officer who was naive enough to act on it would soon get hauled over the coals, as would entry clearance officers, and the staff at Lunar House, Croydon.

A new start in immigration policy would require a new machinery if it were to work satisfactorily. Up to now, the Home Office has had complete legal authority, though the Department of Employment has dealt with work vouchers or permits. There is no particular reason, however, why immigration should be controlled by the same Department that deals with the police, prisons and fire services. The Home Office must obviously always have a role in cases involving national security, but these occupy only a very small part of immigration.

One possibility would be to establish a new Ministry of Migration and Tourism, the Minister to have Cabinet rank. It would be quite logical to have one Department dealing with all kinds of entry from outside, and the combination of immigration with tourism would both alter the tone of control methods and enable the Minister to contribute energetically to increasing our national wealth, improving the balance of payments and having some visible successes, which would be measured much more by whom he let in than by whom he kept out. The Home Office would still deal with nationality. The Minister for Migration and Tourism would have responsibility for a new refugee policy too, and might work in co-operation with the UN High Commissioner for Refugees on this while also co-operating with the Foreign Office on aspects of migration that fell within their sphere of interest: particularly close co-operation

would obviously be needed on EEC matters, and the Minister's brief would include the collection of information on emigration, both to other EEC countries and to the rest of the world, with responsibility for keeping the Cabinet informed of the effects of emigration on population, the economy and education.

Of course such a new Ministry would have to draw a number of its Civil Servants from the existing Home Office strength, since their knowledge and experience would, at least at first, be needed. But the new Department could also include Civil Servants drawn from several other Departments too. Provided the first Minister appointed to such a post were a strong character with a clear vision of the job to be done, so that a new tone could be set from the beginning, the whole character of immigration policy would change both in practice and in public esteem.

Alternatively, the responsibility for immigration could be divided between existing Departments. If the emphasis were to be placed on economic policy, a Minister within the Department of Employment might take over responsibility for the admission of workers and their dependants, a Minister at the Foreign Office deal with a new refugee policy, and so on. There are obvious drawbacks to having such a division of responsibility, though other countries in many cases divide it; perhaps the greatest drawback, given our political system, is that there would be nobody in the Cabinet able to deal with immigration as a whole and to press the claims of policy.

At present, many important decisions on the lives of would-be immigrants, and of existing immigrant residents, are taken by officials at a fairly junior level. Canada orders things very differently; its overseas entry clearance officers are persons of diplomatic rank, all graduates and many with postgraduate degrees, whose work is divided between interviewing candidates for entry and other, varied duties in diplomatic representation. They do not get stale and irritable from having to spend all day and every day interviewing candidates for admission, as any normal human being must risk becoming in monotonous and demanding work. They receive a special training, lasting a year, and including travel to various other countries from which immigrants come, before beginning work. A new structure for immigration control here should be thought out, not only in terms of a new Department, but with concern for important details like this. The job of immigration officer should be redefined: possibly upgraded, possibly combined with other kinds of work. The aim should be an immigration officer service which provides equal courtesy and consideration to people of all nationalities, whether immigrants or tourists, which can comprehend the difficulties of refugees at ports of entry, and which is encouraged to have a welcoming character rather than a suspicious and restrictive one. The appalling queues that develop at our ports for those who are not patrial are a well-known ordeal to visitors from many other countries, and are quite unnecessary; it is

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possible to travel to a dozen other countries without meeting the same difficulties and delays.

The success of a new machinery would depend a great deal on improvement in the law itself and on simplification of the Rules. But such improvement and simplification could only work well if the administrative machine were altered at the same time, both in overall structure and in detailed provisions on job descriptions and the recruitment of skilled and open-minded personnel.

6. RECOMMENDATIONS

A new Immigration Act should begin with a preamble stating the objectives of United Kingdom immigration policy. This would clarify its purposes in the public mind and also serve to help interpretation of the Act in difficult cases.

The preamble should begin by saying that the United Kingdom regarded freedom of movement for all people as the ultimate ideal of policy, and that the purpose of the legislation was to regulate the admission of non-citizens in accordance with the principles laid down by international law. It could add that, specifically, it would observe the principle of non-discrimination on grounds of race, colour, sex, political opinion, religion or social class; that it would uphold the unity of family life; that it offered welcome to refugees; and that so far as possible it would assist individuals to move freely for the purposes of education, training and finding employment.

The statute could then begin by affirming that all citizens had the right to enter and leave the United Kingdom freely. It would next have a section on the EEC, declaring the relationship between EEC law and the United Kingdom on migration of EEC nationals.

The rest of the statute would then deal with:-

(a) admission for settlement from all other parts of the world outside the EEC
(b) temporary admissions (e.g. students, visitors)
(c) administration of policy: to be in the hands of a new Ministry of Migration and Tourism
(d) an appeals system
(e) deportation and removal
(f) exceptions (for seamen, aircrews etc.)
(g) supplementary matters and expenditure

Admission for settlement should in future be under a completely new system and administration. Responsibility for it should lie with a new Migration Service, employed by the new Ministry, and composed of specially trained officers who combined this responsibility with other responsibilities within the Ministry's area of work. This would make their immediate tasks more varied,

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and give them prospects of promotion in a variety of fields: the promotion of tourism; the evaluation of emigration's effects; population studies etc. Employees in the Service would have a special training including visits abroad to countries of particular importance to tourism, immigration and emigration. They would have part of their service in the UK and part of it at overseas posts, including some time in other EEC countries.

Admission for permanent settlement would be of three kinds:

(i) for refugees
(ii) for family reunion (spouses, children under 21, and elderly dependant parents of citizens and existing residents)
(iii) all others on a new 'points' system.

Refugees' claims would not be a matter for the new Migration Service's final decision, but for a new Board for the Recognition of Refugees (see Chapter 5). However, the new Service would be qualified by its training to assist refugees at overseas posts and after arrival in the UK and to refer them to the new Board.

The new Service would have responsibility for admitting persons in the Family Reunion category, their task being to establish the facts of the relationship claimed. The present elaborate system in the Indian sub-continent, for demanding non-existent documents and suspecting all applicants of being prima facie fraudulent, should be completely abandoned and replaced by more practical requirements and a change of attitude. The formation of a new Service would be of great importance in making this change possible.

The points system would be similar in concept to Canada's, but with important practical differences reflecting the different situation in the UK. There should be a maximum allowance of 100 points to which an individual could make a claim, and any person awarded more than, say, 65 should be allowed admission for permanent settlement. However, as with Canada's system, there should be some discretionary power in the hands of the Migration Service to allot points, so that a person who cannot make up the total required on strictly-defined criteria, but whom common sense and circumstance make obviously suitable for admission, should be given entry.

A points system would make it possible to incorporate very easily and flexibly into a new policy a wide variety of considerations that would otherwise be difficult to provide for in detail in a new statute. The work-permit system could come under it. Anyone for whom an employer in the UK had applied, certifying that there was no worker available in the UK to do the job should automatically receive, say, 50 points *and temporary admission*. A work-permit holder having no claim to any points besides those obtainable through the work-permit would then be eligible for re-consideration after a year in the UK; at that time he could be considered for additional points, to be allotted for example on the basis of the

need for his work, and if he obtained the required number could be given the right to remain.

Anyone with a work-permit who could in the first place be given sufficient points on other qualifications could be admitted for permanent settlement to begin with. Points could be allotted, for instance, to citizens of dependent territories and Commonwealth countries; a system of Commonwealth preference could thereby be incorporated in the new law. Relatives of existing residents in the UK could also be allotted a certain number of points. Points could also be given for fluency in English, for skills likely to be in strong demand in the UK even when no specific job offer has been made, for acute individual distress of a kind that fell outside the Convention definition of a refugee, for the possession of some specified amount of capital combined with business experience, for being self-supporting by reason of having a pension, and so on.

Such a points system would make a great difference in cases like the following:

(1) An Indian immigrant family settled in the UK wants to have the wife's widowed sister from India join them; she has no other family in India, and her presence in the UK would be a help to the family in caring for the household and children. At present it is impossible for such a person to gain admission as she cannot qualify as a relative, or get a work-permit, and has not enough means to support herself for the foreseeable future. It is to her own and the rest of the family's advantage that she should come. On a points system, she could acquire points by being a Commonwealth citizen and a relative of a family in the UK, and for being in distressed circumstances.

(2) The son, over 21, of a West Indian family all of whose other members are in the UK has at present no hope of getting a work-permit, and no other way of coming. If he had a particular engineering skill in strong demand but no specific vacancy to come to, he might acquire enough points through his skill, his relationship to a resident family, his fluency in English and his Commonwealth citizenship.

Cases like these are not numerous, in proportion to the existing total immigrant population, but the difficulty they experience at present often causes hardship and anguish. A points system would combine flexibility in dealing with them with the observance of clear rules and priorities.

The points system would also cut the number of different categories at present listed separately, such as business-men, entrepreneurs, and 'persons of independent means'; all could come under a single points system for admission for settlement. So could the present small 'permit-free' categories of worker, like doctors, entertainers, ministers of religion etc.

The issue of work-permits, and the approval of permit-free categories, could still be within the sphere of the Department of Employment; the new Migration Service would work in co-operation with the Department and consult it about allotting points in difficult cases, for work skills. The admission of temporary

workers (seasonal workers, musicians etc.) would not fall under the points system, but would also require co-operation between the DE and the new Service.

Temporary admissions would otherwise be mostly of students and visitors. A new Act should positively welcome overseas students, and the present discriminatory system of charging them higher fees than home students should be abolished. It is politically and economically important to the UK to foster and improve overseas contacts and goodwill; it is also educationally important for Universities to be as universal as their name implies, while it is morally and politically advisable to widen educational opportunities here for people from Third World countries in particular.

The existing rules on students are not broadly unreasonable in themselves; it is the way in which they are administered that is objectionable. Admission in the first instance should be automatic if an intending student has been offered a place by any recognised University, College or other Institute offering advanced courses in the U.K.: there should be no administrative delays and no refusal by the Migration Service in the face of evidence of an offered place. Admission could still be for a year at a time, renewable subject to satisfactory attendance and examination results, and students could still be expected to leave after completion of their courses, but with three important differences: they should not have to *prove*, as they do now, prior intention to leave; how can one offer satisfactory proof of such an intention? They should be given a period of at least two months' grace after the end of their last term, and not hustled out instantly as they are now, and they should have the right of late appeal against refusal of extension of stay restored to them. (The removal of this right, by the *Suthendran* judgment in 1976, has caused great hardship and distress to many students and some visitors.)

The existing rules for visitors could remain but again without *proof* of prior intention to leave being required. A change of attitude in administering them, especially towards dark-skinned visitors, is required. Such a change of attitude is, however, very necessary indeed; a new Migration Service would be very important here. The right of appeal for overstayers should be restored.

A new Act would have to include sanctions for breaches of the law; there would still have to be provision for removal and deportation. There would also have to be reserve powers in the hands of the Home Office to refuse entry to, and to remove or deport, persons whose presence threatened national security, the public good or public health.

New legislation would afford the opportunity to reverse the whole trend of earlier immigration law here, and to establish important safeguards for the civil liberties of all persons within United Kingdom jurisdiction (including those who had physically landed but not been granted any kind of admission). It should not be possible to detain, in prison or elsewhere, any immigrant, intending immigrant or person suspected of illegal entry for longer than 24 hours before

the person concerned is taken before a magistrate, informed of the breach of law he is supposed to have committed, and given the opportunity to get legal advice and representation. At present, immigration law bestows certain arbitrary powers on police constables and immigration officers. Either may arrest without warrant anyone who has, or whom he with reasonable cause suspects to have,

(a) committed or attempted to commit any of various offences listed in s.24(1) of the 1971 Act, including overstaying or failing to observe one of the conditions of stay
(b) helped an illegal entrant to enter, or knowingly harboured a person who has entered illegally or has committed any of several offences under the Act.

For example, any immigration officer can, under present law, arrest without warrant a person whose house an overseas student is staying in if the officer thinks that the person concerned may be aware that the expiry date stamped on the student's passport has gone by. Harbouring is an offence punishable on summary conviction with a fine and six months' imprisonment, and on indictment with up to seven years' imprisonment.

Such arbitrary powers of arrest, and severe penalties, should be done away with. They reflect an attitude which regards illegal immigration as a particularly heinous crime (penalties for cruelty to children are much lighter) and they encourage the harassment of individuals.

The existing powers to imprison people without trial under the Immigration Act should also be abolished. According to a report by the Joint Council for the Welfare of Immigrants, 5,326 persons were received into Prison Department establishments under the 1971 Act between 1st January 1973 and 30th November 1977. (These figures do *not* include persons detained pending deportation on completion of a prison sentence for some non-immigration offence.) The average daily population of non-criminal prisoners held under the Act has increased considerably in the last two years, from 121 in 1976 to 238 in the later part of 1977. Some of them, moreover, are taken into custody and then put on a plane to be removed from the country without the case against them ever having been heard by a court and without their having any right of appeal before removal. The JCWI Report points out that, 'Whereas the convicted prisoner knows when he can expect to have served his sentence, and the remand prisoner knows when he is to return to court, the Immigration Act prisoner is entirely at the mercy of the dilatoriness of the Home Office bureaucracy'. In 1976, one such prisoner committed suicide and three others attempted it while awaiting removal or deportation.

It is monstrous that a country which proclaims its respect for the rule of law and criticises other nations for denying human rights should tolerate such a system.

Rules: All countries which restrict or regulate immigration find it necessary to

supplement their statute law with regulations, issued under powers conferred on the executive by the statute, which can be changed much more easily and quickly than statute law can. Changing circumstances and unforeseeable crises make this flexibility necessary, but at the same time such executive powers can be highly dangerous to the civil liberties of migrants and even of citizens. The changes made in the UK's Immigration Rules on marriage, in March 1977, are a case in point: both citizen women and resident migrant women were suddenly prevented from having their husbands or fiancées admitted for settlement unconditionally after marriage; the Home Secretary was empowered to declare their marriages 'not genuine' during the first twelve months and remove the husbands from the country, even if civil and religious law held the marriages to be valid ones.

A new Act should authorise the making of Immigration Rules but with new safeguards. At present, the Home Secretary can make or amend Rules at any time with immediate effect. The new Rules must be 'laid before' Parliament (printed and put on a table) and can be disapproved by a resolution of either House of Parliament made within forty days. The statute should authorise such immediate change only in clearly-defined cases of national security, public order or public health. It should allow other changes in the Rules to be made effective only *after* a Parliamentary debate with a majority in both Houses.

The drafting of the Act itself should be such as to make impossible any major changes in the Rules concerning Refugees and Family Reunion. If, as suggested in Chapter 5, the UN Convention on the Status of Refugees were to be enacted in the new immigration law, so that it became part of UK domestic law, this would meet the case for refugees. For close relatives, both the absolute right to enter *and* the standards to be observed by the Migration Service in processing applications would have to be stated.

Conclusion

The analysis and recommendations made in this Report may provoke disagreement. I hope they do, provided that such disagreement leads to new ideas and new arguments on immigration policy, which will lift the discussion out of the rut into which it has sunk and set it off on a more promising road.

The Runnymede Trust was established in 1968 as a charity concerned with the collection and dissemination of information and the promotion of public education on immigration and race relations. Former Directors have been Mr Dipak Nandy (1968-73), Mr David Stephen (1973-75) and Mr Tom Rees (1975-77).

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Printed by Robendene Ltd., Chesham, Bu